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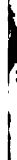
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COLORADO^c STATUTES^h ANNOTATED

**WITH ALL ACTS AND AMENDMENTS UP TO AND IN-
CLUDING 1911 SESSION OF THE LEGISLATURE.**

**WITH
COMPLETE LEGISLATIVE HISTORY AND DIGEST OF
CITATIONS TO DATE.**

VOLUME THREE

**CONTAINING STATUTE SECTIONS 2136 TO 4161-G.
ELECTIONS TO LUNATICS.**

**BY
R. S. MORRISON
AND
EMILIO D. DESOTO.**

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- 2139. County officers to be elected.
- 2140. County commissioner—Justice—Constable—Other officers.
- 2141. Commencement of terms of office.

2136. Time of holding general election.

SECTION 1. A general election shall be held in the wards and precincts in this state on the first Tuesday of O A. D. 1877, 1878 and 1879, and on the Tuesday succeeding the first Monday in November, A. D. 1880, and on the Tuesday succeeding the first Monday of November in every year thereafter [Election day in November is a legal holiday. Section 2949.]

Legislation. Sec. 2136. G. S. § 1154. G. L. § 930 Act 1877, entitled

AN ACT

An Act Regulating Elections, and Repealing All Territorial Acts Upon That Subject.

All the G. L. sections cited in this chapter are from that Act. section complies with the terms of Art. VII, § 7, of the constitution.

By Act 1861 p. 73 § 3 the general election was to be held on first day of December of that year and annually thereafter on the first Tuesday of September. Changed to second Tuesday by Act 1864 p. 79 § 1. Changed to first Tuesday of August by Act 1866 p. 54 § 1 back to second Tuesday in September by R. S. p. 283 § 3 and p. 303 § 84.

2137. State officers to be elected.

SEC. 2. At the general election, A. D. 1878, and every alternate year thereafter, there shall be elected the following officers, to-wit: One governor, one lieutenant-governor, one secretary of state, one state treasurer, one auditor of state, one superintendent of public instruction, and two regents of the university and in each representative district of the state such member of the house of representatives as they may severally be entitled to. State senators shall be elected in every senatorial district at general election in the year when the term of office of senator shall expire in such district, respectively; also, on the first Tuesday succeeding the first Monday of November, A. D. 1878, and every alternate year thereafter, there shall be elected the number of representatives in congress to which the state may be entitled.

[See Constitution, art. 4, section 3, for election of officers and terms.]

Legislation. Sec. 2137. G. L. § 932. G. S. § 1156.

The list of territorial officers to be elected is found in R. S. p. 283

2138. Judge of supreme court—Electors of president—District attorney—District judge.

SEC. 3. At the general election, A. D. 1879, and every third year thereafter, there shall be elected one judge of the supreme court, and in each judicial district of the state, one district attorney. At the general election, A. D. 1880, and every fourth year thereafter, there shall be elected such a number of electors of president and vice president of the United States as the state may be entitled to in the electoral college; and at the general election in 1882, and every sixth year thereafter, there shall be elected in each judicial district one judge of the district court.

[See Constitution, art. 6, sections 6-8, for election and term of supreme judge.]

[See Constitution, art. 6, section 15, for election of district judge.]

[See Constitution, art. 6, section 21, for election and term of district attorney.]

Legislation. Sec. 2138. G. L. § 933. G. S. § 1157.

CITATIONS.

This section cited in holding that the terms of all the district judges expire on the same day.—*Election of District Judges, In re*, 11 C. 375, 18 P. 283.

District judges elected to fill a vacancy hold only for the unexpired term.—*People v. Le Fevre*, 21 C. 243, 40 P. 891.

The amendment to sec. 8, art. XIV., of the constitution changing the time for election of county officers did not change the manner of filling vacancies.—*Mannix v. Seibach*, 31 C. 504, 74 P. 461.

2139. County officers to be elected.

SEC. 4. At the general election, A. D. 1877, and every alternate year thereafter, there shall be elected in every county of the state the following county officers, to-wit: One county clerk, who shall be ex officio recorder of deeds and clerk of the board of county commissioners; one sheriff, one coroner, one treasurer, who shall be collector of taxes; one county superintendent of schools, one county surveyor and one county assessor. There shall also be elected in every county of the state at the general election, A. D. 1877, and every third year thereafter, one county judge.

[See Constitution, art. 14, section 8, for election of county officers.]

[See Constitution, art. 6, section 22, for election and term of county judge.]

[For time of election of juvenile judge see section 1594.]

Legislation. Sec. 2139. G. L. § 931. G. S. § 1155.

2140. County commissioners—Justice—Constable—Other officers.

SEC. 5. At the general election, A. D. 1877, and annually thereafter, there shall be elected in each county of the state a county commissioner, whose term of office shall be three years; and in each justice's precinct, except wards in incorporated cities, there shall be elected at the general election, A. D. 1877, and annually thereafter, one justice of the peace and one constable, whose terms of office shall be two years; and all other officers, not herein specified, that now are or hereafter may be created shall, unless otherwise provided, be elected on the day of the general election.

[See Constitution, art. 14, section 6, for election of county commissioners.]

[See Constitution, art. 14, section 11, for election of justices and constables.]

Legislation. Sec. 2140. G. L. § 934. G. S. § 1158.

2141. Commencement of terms of office.

SEC. 6. The regular term of office of all state, district, county and precinct officers and of the judges of the supreme court shall commence on the second Tuesday of January next after their election, except as otherwise provided by law.

Legislation. Sec. 2141. G. L. § 936. Amended by Act 1881 p. 113. S. § 1160. The amendment consisted in adding "precinct" officers.

The term of office was not given in the election chapter of the R. but was separately stated in the Acts which created the several offices.

CITATIONS.

Where one elected county judge died before taking office the incumbent did not hold over but a vacancy existed.—*Peov. v. Boughton*, 5 C. 489.

This section secured the uniformity in the commencement, duration and termination of the terms of office of district judges, which the constitution contemplated.—*Election of District Judges, In re*, 11 C. 375, 18 P. 283.

CITATIONS CONTINUED.

This section cited in holding that district judges elected to fill a vacancy hold only for the unexpired term.—*Peo. v. Le Fevre*, 21 C. 228, 243, 40 P. 885, 891.

The January meeting of county commissioners which is required to be held on the first Monday in January, must be held by the old board.—*Peo. v. Carver*, 5 A. 158, 38 P. 333.

B. CALL AND NOTICE OF ELECTIONS.

Section.

- 2142. Secretary of state notify county clerks.
- 2143. Vacancies to be filled at general election—Notice.
- 2144. County clerk to give notice of election.
- 2145. Submitting constitutional amendments.

2142. Secretary of state notify county clerks.

SEC. 7. The secretary of state shall at least thirty days previous to any general election, at which officers of the executive department, regents of the university, members of the general assembly, judges of the supreme and district courts, district attorneys, representatives in congress, and presidential electors, are to be elected for a full term, make out and cause to be delivered, or transmitted by registered letter, to the county clerk of each county, a notice in writing, stating that at the next general election the before mentioned officers are to be elected, or so many of such officers as are then to be chosen; when members of the general assembly are to be elected, and are included in such notice, it shall specify the number of the district, and the name of the member or members whose terms of office will expire.

Legislation. Sec. 2142. G. L. § 944. G. S. § 1168.

The notice ran to the sheriff under the territory. R. S. p. 285 § 10.

CITATIONS.

This section referred to in holding that the term of office of all district judges expires on the same day.—*Election of District Judges, In re*, 11 C. 374, 18 P. 282.

Sections 2142-2144 were not repealed by the Australian election law of 1891.—*Peo. v. Kerwin*, 10 A. 475, 51 P. 532.

2143. Vacancies to be filled at general election—Notice.

SEC. 8. Whenever there is a vacancy in any of the offices mentioned in the preceding section, which is by law to be filled at general election, at which county officers are elected, the secretary of state shall, at least thirty days previous to said election, notice in writing as provided for in the preceding section, and notice shall specify the office in which a vacancy exists; the cause of such vacancy; the name of the officer in whose office it occurred, and the time when his term of office will expire.

Legislation. Sec. 2143. G. L. § 945. G. S. § 1169.
Framed on R. S. p. 285 § 11.

CITATIONS.

A convention committee had no authority to make a nomination for the office of county commissioner, which became vacant by death of the incumbent after the adjournment of the convention.—*Peo. v. Kerwin*, 10 A. 475, 51 P. 532.

2144. County clerk give notice of election.

SEC. 9. The county clerk shall give notice in writing of a general or special election, in which shall be stated the time when it will be held, and the officers then to be elected; by causing the same to be published in a newspaper having general circulation in the county, and sending a copy of such notice by mail to the judges of election in each precinct, to be posted at the place of voting, at least fifteen days before such time.

Legislation. Sec. 2144. G. L. § 946. G. S. § 1170.

CITATIONS.

Where the call made provisions for two county commissioners under the constitutional amendment of 1901, and such commissioners were nominated, held that the county clerk could not be enjoined from having such names printed upon the ballot.—*Sherlock v. District Court*, 39 C. 41, 88 P. 396.

Where the office of county commissioner became vacant by death and the county clerk gave no notice that a commissioner was to be elected, the election of one nominated by a committee was invalid.—*Peo. v. Kerwin*, 10 A. 473, 475, 51 P. 531.

2145. Submitting constitutional amendments.

SEC. 10. Whenever a proposed constitutional amendment or other question (except the incurring of a bonded indebtedness) is to be submitted to the people of the state, for popular vote at any general election, the secretary of state shall duly, and not less than fifteen days before election, certify the same to the clerk of each county of the state, and the clerk of each county shall include the propositions or questions to be submitted as they will appear in the ballot to be used on election day, in the publication provided for by section eleven of this act, and in the notice provided for by section twelve.

[Section 11 referred to is section 2159.]

[Section 12 referred to is section 2160.]

Legislation. Sec. 2145. Act 1891 p. 150 § 16, entitled:

AN ACT

In Relation to Elections Defining Offenses Against the Same and Prescribing Punishments Therefor.

This is known as the Australian Ballot Act.

CITATIONS.

This section furnishes the procedure for submitting constitutional amendments and other questions to a vote of the people.
—*In re House Resolution* (March 1911), 114 P. 294.

C. QUALIFICATIONS OF ELECTORS.**Section.**

2146. Qualifications of voters.

2147. Right of women to vote—Qualifications.

2148. Prisoners can not vote—Effect of pardon or full service—Lunatics.

2149. Absence in military service—Students—Paupers.

2150. Qualified electors eligible to office.

2150-A. Definition of taxpayers, etc.

2150-B. Forfeiture of franchise.

2146. Qualifications of voter.

SEC. 11. Every person over the age of twenty-one years, pos-

sessing the following qualifications, shall be entitled to vote at elections:

First—He shall be a citizen of the United States.

Second—He shall have resided in this state one year immediately preceding the election at which he offers to vote; in the city ninety days; in the city or town thirty days, and in the ward or precinct ten days.

Legislation. Sec. 2146. G. L. § 926 amended by Act 1881 p. 113 § 1. S. § 1150. Amended by Act 1903 p. 214 § 1. Under the G. S. section, 1881 Act, persons who had declared their intention four months before election were entitled to vote. The amendment of 1881 changed only the county residence required from 30 to 90 days. The present text denies vote to those who have only declared their intention to become citizens. The final amendment, such present text, was necessitated by the amendment Art. VII § 1, of the constitution.

The list of qualified voters under the territory is found in Act 1861 72 § 1. Amended as to periods of residence by Act 1864 p. 79 § 1. The list was altered by R. S. p. 283 § 1 to exclude the negro vote, but the word "not being a negro or mulatto" were struck out by Act 1872 p. 127 § 1. The entire section was substituted by Act 1874 p. 116 Art. 2 § 1.

The Act 1864 p. 77 provided for taking the votes of Colorado volunteers. Repealed and substituted by Act 1865 p. 56. The substitute was abrogated by the sweeping clause of G. L. § 1057 which repealed all territorial laws on the subject of elections.

CITATIONS.

This section cited in discussing the qualifications necessary to constitute a legal voter.—*Kellogg v. Hickman*, 12 C. 265, 21 P. 325. *Sharp v. McIntire*, 23 C. 102, 46 P. 116.

This section cited in considering the qualifications of electors to vote upon the removal of county seats.—*Eagle County v. Love*, 26 C. 304, 57 P. 1083.

Distinction between residence and domicile stated. Facts sufficient to show a change of domicile.—*Jain v. Bossen*, 27 C. 425, 62 P. 194.

One from without the State and a student at the School of Mines, who did not intend to reside in the county after completing his course of study, was not a resident or legal voter.—*Parsons v. Peo.*, 30 C. 391, 70 P. 690.

2147. Right of women to vote—Qualifications.

SEC. 12. That every female person shall be entitled to vote at all elections, in the same manner in all respects as male persons are, or shall be entitled to vote by the constitution and laws of this state, and the same qualifications as to age, citizenship, and time

of residence in the state, county, city, ward and precinct; and all other qualifications required by law to entitle male persons to vote shall be required to entitle female persons to vote.

Legislation. Sec. 2147. Act of 1893 p. 256 § 1, entitled:

AN ACT

"To Submit to the Qualified Electors of the State the Question of Extending" the Right of Suffrage to Women of Lawful Age, and Otherwise Qualified, According to the Provisions of Article Seven, Sec. 2, of the Constitution of Colorado.

Its section 2 provided that "Section 1 of this Act shall be submitted" to popular vote and upon its adoption by a majority vote it should become law. The other sections gave detailed instructions for the manner of submission. It was carried by a majority vote at the general election of that year.

Under the peculiar language of Art. VII § 2 of the constitution it is a statute and not a part of the constitution, and yet the Attorney-General gave an *ex parte* opinion that it was not repealable by the general assembly. Report of Attorney-General 1893-1894 p. 378. That opinion is now immaterial since the amendment in 1901 of Art. VII § 1 adopted to cut out the votes of those who were not full citizens also omitted the word "male" before "person."

CITATIONS.

This section referred to in connection with sections 2174, 2175.—*Peo. v. Bates*, 24 C. 416, 51 P. 162.

2148. Prisoners cannot vote—Effect of pardon or full service—Lunatics.

SEC. 13. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person while confined in any public prison be entitled to vote, but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by pardon or by having served out his full term of imprisonment, shall be vested with all the rights of citizenship except as provided in the constitution.

[See also section 2027.]

Legislation. Sec. 2148. G. L. § 927. G. S. § 1151. R. S. p. 283 § 2. Act 1861 p. 73 § 2 made a larger list of disqualifications; among them duellists and persons betting on the election.

2149. Absence in military service—Students—Paupers.

SEC. 14. For the purpose of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his

presence, or lost it by reason of his absence, while in the civil military service of the state or of the United States, nor while a student at any institution of learning, nor while kept at public expense in any poor house or other asylum, nor while confined in public prison.

Legislation. Sec. 2149. G. L. § 928. G. S. § 1152.

2150. Qualified electors eligible to office.

SEC. 15. Every qualified elector shall be eligible to hold office of this state for which he is an elector, except as otherwise provided by the constitution.

[When conviction of felony disqualifies from holding office. See 2026.]

Legislation. Sec. 2150. G. L. § 929. G. S. § 1153.

The last sentence of § 2 R. S. p. 283, Act 1861 p. 73 § 2, reads to same tenor as the text.

CITATIONS.

The statute of Edward VI. in so far as the same disqualifies a person from holding an office who has resorted to perjured means to obtain it is not in force in this state.—*Pec Goddard*, 8 C. 434, 7 P. 302.

This section is not obnoxious to the provisions of sec. art. V. of the constitution.—*Id.*

2150-A. Definition of taxpayer, etc.

SEC. 15a. The term "taxpayer," "taxpaying elector" or "qualified taxpaying elector" shall be held to mean and include those persons who are qualified voters under the registration and election laws of this state and who, in the calendar year preceding the election at which such vote is offered, shall have paid a tax, or be liable for the payment of such tax upon real personal property assessed to them and owned by them in the county where such vote is offered. And the taking or placing of the title to property in the name of another, or the payment of tax or the taking or issuing of a tax receipt in the name of another for the purpose of attempting to qualify such person as a "taxpayer" or as a "taxpaying elector" or as a "qualified taxpaying elector" shall be deemed a fraud against the ballot and any ballot cast by such person shall be void.

Legislation. Sec. 2150A. Act 1909 p. 511 § 1, entitled:

AN ACT

Defining the Terms "Taxpayers," "Taxpaying Elector" and "Qualified Taxpaying Elector" with Reference to Casting a Vote at any Election; and Providing Penalties for the Violation of This Act.

2150-B. Forfeiture of franchise.

SEC. 15b. Any person, company, corporation or association violating any of the terms or provisions of this act, or aiding or assisting any one to violate the same, either directly or indirectly, shall forfeit and lose all rights, franchises or other benefits accruing or to accrue to the benefit of such person, company, corporation or association by or as the result of any such election, and the same shall be null and void.

Legislation. Sec. 2150B. Act 1909 p. 511 § 2, cited under § 2150A.

D. NOMINATION AND CERTIFICATION OF CANDIDATES.

Section.

- 2151. Nomination of candidates.
- 2152. Certificates of nominations by conventions.
- 2153. Certificate of nomination by individuals.
- 2154. Nominations other than by conventions.
- 2155. Contents of certificates of nominations.
- 2156. Preservation of certificates.
- 2157. Filing of certificates of nominations.
- 2158. Certifying nominations to county clerks.
- 2159. Publication and posting of nominations.
- 2160. Lists of nominations sent to precinct officers—Lists posted.
- 2161. Objections to nominations.
- 2162. Acceptance of nominations.
- 2163. Vacancies in nominations.

2151. Nomination of candidates.

SEC. 16. Any convention of delegates of a political party which presented candidates at the last preceding election held for the purpose of making nominations to public office, and also voters to the number hereinafter specified, may nominate candidates for public offices to be filled by election within this state. A conven-

tion within the meaning of this act is an organized assemblage of voters or delegates representing a political party, which at the election before the holding of such convention polled at least per centum of the entire vote cast in the state, county or of political division or district for which the nomination may be made. A committee appointed by any such convention may also make nominations to public office when authorized to do so by resolution adopted and passed by the convention at which such committee was appointed.

Legislation. Sec. 2151. § 3 Act 1891, cited under § 2145.

CITATIONS.

Sections 2151-2160 referred to in an election contest as providing in detail the manner of making, certifying and publishing nominations.—*Allen v. Glynn*, 17 C. 342, 29 P. 670.

The secretary of state has no power to decide between sets of nominations, but should certify both tickets to the court clerk.—*Peo. v. District Court*, 18 C. 34, 31 P. 342.

Circumstances under which a nominating committee have made one nomination could not, while that remained in force, make another.—*Le Bert v. Shirley*, 24 C. 270-272, 50 P. 862.

Where a convention empowered a committee to nominate a ticket but thereafter nominated a full ticket, held a revocation of the power delegated to the committee.—*Leighton Bates*, 24 C. 309, 312, 50 P. 856.

A nomination made at one meeting of a convention may be rescinded at an adjourned meeting.—*Phillips v. Smith*, 25 C. 155 P. 177.

This section cited as to the right to the use of an emblem.—*Schafer v. Whipple*, 25 C. 403, 55 P. 181.

2152. Certificates of nominations by conventions.

SEC. 17. All nominations made by such convention or committee shall be certified as follows: The certificate of nomination which shall be in writing, shall contain the name of the officer for which each person is nominated, the name, postoffice address, if any, and residence of each such person, and if in a city, the street, number of residence and place of business, if any, and shall designate, in not more than five words, the party which such convention or committee represents. It shall be signed by the presiding officer and secretary of such convention or committee, and shall add, to their signatures their respective places of residence.

and postoffice address, if any, and make oath, before an officer qualified to administer the same, that the affiants were such officers of such convention or committee, and that said certificates and the statements therein contained are true, to the best of their knowledge and belief. When the nomination is made by a committee, the certificate of nomination shall also contain a copy of the resolution passed at the convention, which authorized the committee to make such nomination. In the case of electors of president and vice president of the United States, the names of the candidates for president and vice president may be added to the political party or appellation.

Legislation. Sec. 2152. § 4 Act 1891, cited under § 2145.

CITATIONS.

Where a nomination of county commissioner to fill a vacancy caused by death was made by a committee but no notice given of the election as required by sec. 2144, the election was held invalid.—*Peo. v. Kercin*, 10 A. 474, 51 P. 530.

2153. Certificate of nomination by individuals.

SEC. 18. Certificates of nomination of candidates for offices to be filled by the voters of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state. Certificates of nomination of candidates for offices to be filled by the voters of any city or town shall be filed with the clerk of such city or town. All other certificates of nomination shall be filed with the clerks of the respective counties wherein the officers are to be elected.

Legislation. Sec. 2153. § 5 Act 1891, cited under § 2145.

2154. Nominations other than by conventions.

SEC. 19. Candidates for public office may be nominated otherwise than by a convention or committee in the manner following: A certificate of nomination containing the names of the candidates for the offices to be filled, with such information as is required to be given in certificates provided for by section four of this act, except that said certificate shall designate in not more than five words, instead of the party, the political or other name, which

the signers shall select; shall be signed by voters residing within the district or political division, in and for which the officer or officers are to be elected, to the number of at least five hundred, when the nomination is for an office to be filled by the voters of the entire state; of at least one hundred when the nomination is for an office to be filled by the voters of a district, less than the state and greater than a county, or by the voters of a county or city of at least fifty, when the nomination is for an office to be filled by all the voters of a ward, town or other division less than a county, other than a city. The signatures to a certificate of nomination need not all be appended to one paper. The certificate may designate or appoint upon the face thereof, one or more persons who, for the purposes set forth in sections fourteen and fifteen of this act shall represent the signers of said certificate. Each voter signing a certificate shall add to his signature his place of residence and shall, before an officer duly authorized to take acknowledgments, acknowledge his signature and make oath that he is a voter within and for the political division, for which such nomination is made, and has truly stated his residence. Said certificate when executed and acknowledged as above prescribed, may be filed as provided for in section four of this act, in the same manner and with the same effect as a certificate of nomination made by convention or committee.

[Section 4 referred to is section 2152.]

[Sections 14 and 15 above referred to are sections 2162 and 2163.]

Legislation. Sec. 2154. § 6 Act 1891, cited under § 2145.

CITATIONS.

This section cited in considering the right to use an emblem where nominations were made by petition.—*Schafer v. Whipple*, 25 C. 402, 55 P. 180.

The voter must not only sign the certificate, but must also sign the oath and a failure so to do invalidates the certificate *Cowie v. Means*, 39 C. 5, 88 P. 486.

Where two certificates nominating the same person were subscribed in part by the same electors, the signatures so duplicated were rejected.—*O'Connor v. Smithers*, 45 C. 31, 99 P.

2155. Contents of certificates of nomination.

SEC. 20. No certificate of nomination shall contain the names of more candidates for any office than there are offices to fill, but if any such certificate does contain the names of more candidates than there are offices to fill, only those names which come first in order on such certificate, and are equally numbered with the number of offices to be filled, shall be taken as nominated, and all the rest of such names shall be treated as surplusage. No person shall sign more than one certificate of nomination for any office.

Legislation. Sec. 2155. § 7 Act 1891, cited under § 2145.

CITATIONS.

Where the same electors signed two certificates, the signatures so duplicated were rejected.—*O'Connor v. Smithers*, 45 C. 32, 99 P. 50.

2156. Preservation of certificates.

SEC. 21. The secretary of state shall cause to be preserved in his office, for the period of two years, all certificates of nomination filed therein under the provisions of this act; and each county clerk or city clerk shall cause to be preserved in his office, for a like period, all certificates of nomination filed therein. All such certificates shall be open to public inspection, under proper regulations, to be made by the officers with whom the same are filed.

Legislation. Sec. 2156. § 8 Act 1891, cited under § 2145.

2157. Filing of certificates of nomination.

SEC. 22. When nominations are made by a convention or committee, as provided for in section four of this act, the certificates of nomination to be filed with the secretary of state shall be filed not more than sixty nor less than thirty days before the day of election and the certificates of nomination herein directed to be filed with the county clerk shall be filed not more than sixty, nor less than fifteen days before election; and the certificates of nomination herein directed to be filed with the city clerk shall be filed not more than thirty nor less than fifteen days before the day of election. Certificates of nomination, otherwise than by a conven-

tion or committee, made according to the provisions of section six of this act, shall, when required to be filed with the secretary of state, be filed not more than forty nor less than thirty days before election; and when required to be filed with the county clerk, shall be filed not more than thirty nor less than fifteen days before election; and when required to be filed with the city clerk, shall be filed not more than thirty nor less than fifteen days before election. All certificates of nominations made by conventions shall be filed in the proper offices, not later than five days after the date of such nominations.

[Section 4 referred to is section 2152.]

[Section 6 referred to is section 2154.]

Legislation. Sec. 2157. § 9 Act 1891, cited under § 2145.

CITATIONS.

Where two certificates nominating the same persons were subscribed in part by the same electors, the signatures so duplicated were rejected.—*O'Connor v. Smithers*, 45 C. 33, 99 P. 50.

A certificate void for want of sufficient signatures cannot be amended by an additional certificate after the lapse of time for nominations.—*Id.*

2158. Certifying nominations to county clerks.

SEC. 23. The secretary of state shall, immediately upon the expiration of the time within which certificates of nomination may be filed with him and corrections thereof made, certify to the county clerk of each county, within which any of the voters may by law vote for the candidates named in the certificate, the name and description of each such candidate, together with the other details mentioned in such certificate of nomination so filed with the secretary of state.

Legislation. Sec. 2158. § 10 Act 1891, cited under § 2145.

2159. Publication and posting of nominations.

SEC. 24. For at least six successive days before an election to fill any public office, the county clerk of each county or the city or town clerk of each town shall give notice in not less than two nor more than four newspapers published within the county, a list of

all nominations to offices certified to him under the provisions of this act. Such publication shall contain the name and residence, and, if in a city, the street, number of residence and place of business, if any, and the party or other designation of each candidate, and shall be, as far as possible, in the form in which such nominations shall appear upon the official ballots. In the case of municipal elections such publication of the names of candidates for municipal offices shall be made in newspapers which are published within the municipality where the election is to be held. One of such publications shall be made in a newspaper which advocates the principles of the political party that at the last preceding state election cast the largest number of votes, and another of such publications shall be made in the newspaper which advocates the principles of the political party which at the last preceding state election cast the next largest number of votes. The county clerk, in selecting the respective papers for such publication, shall select those which, according to the best information he can obtain, have the largest circulation within the county. For the purpose of ascertaining which paper published in said county has the largest circulation, the county clerk may require a sworn certificate showing the number of bona fide subscribers to each newspaper. In making additional publications county clerks shall keep in view the object of giving information as far as possible to the largest number of voters of all political parties, and in no event shall such additional publication be made in two newspapers representing the same political party. The county clerk shall make such publications daily in counties where daily newspapers are published, but if there be no daily newspaper published within the county, one publication in each newspaper shall be sufficient. Should the county clerk find it impracticable to make the publication six days before election day in counties where no daily paper is printed, he shall make the same at the earliest possible day thereafter, and one of the publications in any newspaper shall be in the last issue thereof before the day of election. In counties where there are no daily papers the county clerk shall make the publication at the earliest possible day after the filing in his office of such certificates of nomination, and in counties where it is impracticable to make such publication in newspapers advocating opposite political principles such publi-

cation shall be made in the newspaper having the largest circulation, and in counties where there are no newspapers published the county clerk shall post double the number of printed lists and such additional lists shall be posted in other conspicuous places in different portions of the county.

Legislation. Sec. 2159. § 11 Act 1891, cited under § 2145.

CITATIONS.

This section referred to in a dissenting opinion.—*Capps v. Krier*, 25 C. 479, 55 P. 167.

Sec. 1423 G. S. (Now Sec. 3934.) as to newspaper fees, does not apply to the publication of the list of nominations; newspapers are entitled to receive reasonable value.—*Pitkin County v. Price*, 10 A. 521, 51 P. 1011.

Under this and sec. 2235 the publisher is entitled to compensation for printing separate columns for candidates and political designations. *Montezuma County v. Frederick* (May, 1911), 115 P. 514.

2160. Lists of nominations sent to precinct officers—Lists posted.

SEC. 25. The county clerk of each county and the city clerk of each city and the town clerk of each town shall, at least six days before election day, send to the election officers in each election precinct in such county, city or town at least five and not more than ten copies, for each election precinct, of printed lists containing the name and residence, and if in a city, the street, number of residence and place of business, if any, and party or other designation of each candidate nominated, as hereinbefore provided, to be voted for by the voters of the respective counties, cities or towns. Such lists shall, at least three days before the day of election, be conspicuously posted by such election officers in one or more public places in each election precinct of the county, city or town, one or more of which shall be duly placed where such election is to be held.

Legislation. Sec. 2160. § 12 Act 1891, cited under § 2145.

CITATIONS.

This section referred to in a dissenting opinion.—*Capps v. Krier*, 25 C. 479, 55 P. 167.

2161. Objections to nominations.

SEC. 26. All certificates of nomination which are in apparent conformity with the provisions of this act, shall be deemed to be valid, unless objection thereto shall be duly made, in writing, within three (3) days after the filing of the same. In case such objection is made, notice thereof shall be forthwith mailed to all candidates who may be affected thereby, addressed to them at their respective postoffice addresses, if any, or places of residence as given in the certificate of nomination.* The officer with whom the original certificate is filed shall pass upon the validity of all objections, whether of form or substance, and his decision upon matters of form shall be final. His decisions upon matters of substance shall be open to review, if prompt application be made, as provided in section 20 of this act. But the remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final, and not subject to review by any other court, except that the supreme court may, in the exercise of its discretion, review any such judicial proceeding in a summary way; and provided that said ministerial officers shall decide such objections within at least forty-eight hours after the same are filed, and any objection sustained may be remedied or defect cured upon the original certificate, or by an amendment thereto, or by filing a new certificate within three days after such objection is sustained.

[Section 20 referred to is section 2240.]

Legislation. Sec. 2161. Act 1897 p. 154 § 13, amending Act 1891 p. 148 § 13, cited under § 2145. The amended section read same as text down to the star after which it read:

The officer with whom the original certificate was filed shall pass upon the validity of such objection and his decision shall be final: Provided, Such officer shall decide such objection within at least forty-eight hours after the same is filed, and any objection sustained may be remedied or defect cured upon the original certificate, or by an amendment thereto, or by filing a new certificate within three days after such objection is sustained.

CITATIONS.

As a general rule, it is too late after ballots have been voted, to interpose objections for mere irregularities in the printing thereof.—*Allen v. Glynn*, 17 C. 339, 342, 29 P. 670.

The power vested in the secretary of state by this section to decide objections, is limited to matters of form only.—*Peo. v. Dist. Court*, 18 C. 31, 31 P. 341.

CITATIONS CONTINUED.

A review in the supreme court should be entertained where the ruling objected to goes to the jurisdiction of the trial court concerning procedure, and the statutory remedy has been denied.—*Leighton v. Bates*, 24 C. 304, 306, 50 P. 856.

The practice stated in order to invoke appellate jurisdiction of the supreme court under this section.—*Liggett v. Bates*, 24 C. 314, 50 P. 860.

In an action between two factions of a political party to determine which one had the right to use the party name and emblem, held that the courts had no control over questions of party policy.—*Whipple v. Broad*, 25 C. 407, 55 P. 172.

Where protests were ruled on by the secretary of state on September 15 and 21, a protest filed October 17 was not filed with the promptness required by this section.—*McKnight v. Whipple*, 25 C. 471, 55 P. 183.

This section cited in an action where the county clerk was directed by the district court to print the nominees of two factions of a political party.—*Spencer v. Maloney*, 28 C. 47, 62 P. 852.

This act furnishes a method of procedure complete in itself for determining all controversies that arise under it; only such matters as the act provides for can be determined in the proceedings instituted thereunder.—*Mills v. Newell*, 30 C. 385, 70 P. 408.

This section cited in holding that the amendment to sec. 8, art. XIV., of the constitution, did not change the manner of filling vacancies in county offices.—*Mannix v. Selbach*, 31 C. 504, 74 P. 461.

In an action to compel the county clerk to file nominations the proceedings were dismissed, because of the absence of one of the judges and the disagreement of the other two as to whether the court should exercise its discretion to review the judgment of the lower court.—*Beach v. Berdel*, 31 C. 506, 74 P. 1130.

Under the act of 1901 (Sec. 2325) the state central committee of a political party, or the state convention while in session, has exclusive jurisdiction to determine all controversies between factions as to which has the regular organization.—*Peo. v. Dist. Court*, 32 C. 19, 74 P. 897.

A certificate of nomination void for want of sufficient signatures, cannot be amended after the lapse of time allowed for nominations.—*O'Connor v. Smithers*, 45 C. 34, 99 P. 50.

2162. Acceptance of nominations.

SEC. 27. Every person nominated for any public office as in

this act provided, shall within five days after the filing of the certificate or nomination paper containing his nomination, in the proper office, accept such nomination in a written declaration signed and acknowledged before an officer authorized to take acknowledgments; the failure of any such nominee to so accept such nomination and file such declaration of acceptance within the time aforesaid, shall be deemed a declination and such nomination shall be treated as vacant, which vacancy shall be filed as provided for other vacancies herein. Two or more nominees may make and acknowledge such acceptance in one paper. *Provided*, That any person nominated for any office by either of the two leading political parties which presented candidates at the last preceding election shall be deemed to have accepted such nomination unless such candidate shall file with the officer having the custody of such certificate of nomination a written declination of such nomination within said five days.

Legislation. Sec. 2162. Act 1891 p. 148 § 14, cited under § 2145.

CITATIONS.

This section referred to in an election contest for the office of district judge.—*Allen v. Glynn*, 17 C. 342, 29 P. 670.

An amendment to a certificate of nomination by petition changing the name and emblem of the party was in effect a new certificate of nomination.—*Whipple v. Kleckner*, 25 C. 423, 55 P. 163.

The failure of a nominee to file his acceptance, leaves the ticket vacant as to that office even though he has already accepted the nomination for the same office upon another ticket.—*O'Connor v. Smithers*, 45 C. 26, 27, 99 P. 48.

2163. Vacancies in nominations.

SEC. 28. Should any person so nominated die before election day, resign or decline the nomination as in this act provided, or should any certificate of nomination be insufficient or inoperative, because of failure to remedy or cure the same, the vacancy or vacancies thus occasioned may be filled in the same manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring

of such vacancies, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed, sworn to and acknowledged in the manner prescribed for the original certificate of nomination, and shall upon being filed at least eight days before the election, have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall, in certifying the nominations to the various county clerks, insert the name of the person who has been nominated to fill a vacancy in place of the original nominee, and in the event that he has already sent forward his certificate, he shall forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, together with the other details mentioned in the certificate of nomination so filed with the secretary of state, and the name of the person for whom such nominee is substituted.* The chairman and secretary of such committee may in like manner make and file with the proper officer a certificate setting forth the occurrence of a vacancy by death, resignation or otherwise, and the further fact that it is not the intention of such committee to fill such vacancy; when such certificates shall be filed with the secretary of state, he shall certify such vacancy to the several county clerks forthwith. All resignations of any candidates nominated for public office shall be made to the committee or officers representing their party, or persons making such nomination, and it shall be the duty of such persons to certify such resignation to the proper officer within five days thereafter, and in case of neglect or refusal of any such committee or officers to so certify such resignation, so that said names may be omitted from the official ballot, upon the complaint of the person aggrieved, it shall be the duty of the district or county court of the county wherein such nomination was originally filed, upon the written complaint of the

person aggrieved, to summarily hear and determine such complaint, and, upon proof of such resignation, together with such neglect and refusal by said committee or officers, to compel the filing of such certificate of resignation. The secretary of state shall not be required to make any certificates of new nominations or vacancies after eight days before election day, exclusive of election day.

[For penalties for frauds committed at conventions or primaries, see sections 2396 to 2401.]

Legislation. Sec. 2163. Act 1894 p. 59 § 15, amending Act 1891 p. 149 § 15, cited under § 2146. The amendment consisted in the addition of all that follows the star.

CITATIONS.

This and sec. 2162 cited in holding that an amendment to a certificate by petition changing the name and emblem, was in effect a new certificate, and when filed too late was properly rejected.—*Whipple v. Kleckner*, 25 C. 423, 55 P. 163.

Handing certificates of nomination to fill vacancies to the secretary of state while on board a train was insufficient; they should be filed at his office.—*Oowie v. Means*, 39 C. 12, 13, 88 P. 488.

E. REGISTRATION OF ELECTORS.

1. In Outlying Precincts and Towns of Less Than 2,000 Population—2164-2173.
2. In Cities of 2,000 to 5,000 Population.—2174-2191.
3. In Cities of More Than 5,000 Population.—2192-2216.

1. IN OUTLYING PRECINCTS AND TOWNS OF LESS THAN 2,000 POPULATION.

Section.

2164. Secretary of state furnish books and blanks.
2165. County clerk furnish blank registries.
2166. Who may be registered.
2167. Judges meet to make registration—Time allowed.
2168. Form of lists—Copies—Return of lists.
2169. Board of registry meet to revise lists.
2170. New precincts—Judges—Change of registration.
2171. Revision of municipal registry lists.
2172. Registry, how made—Filed with town clerk.
2173. Return of registries to county clerk.

2164. Secretary of state furnish books and blanks.

SEC. 29. It shall be the duty of the secretary of state to make out a complete form or a registry book, alphabetically arranged, with the oath of the registrar in blank, and the requisite blank columns properly headed, and have the same printed, and to send copies thereof to the county clerk of each county in the state, together with a sufficient number of copies of the registry and election laws bound in pamphlet form.

Legislation. Sec. 2164. Act of 1874 p. 110 § 8. G. L. § 1042. G. S. § 1266.

2165. County clerk furnish blank registries.

SEC. 30. It shall be the duty of the county clerk of each county to furnish annually for the use of the board of registry in each precinct or ward in his county, four printed copies of said blank registries and send them by mail or other safe conveyance to the judges of elections in such wards or precincts at least twenty (20) days prior to the day of the first meeting of the board of registry as herein provided.

Legislation. Sec. 2165. Act 1874 p. 110 § 9. Amended by G. L. § 1043. G. S. § 1267.

2166. Who may be registered—Oath.

SEC. 31. That hereafter the judges of election, when acting as a board of registry in cases provided by law, shall not, in any case, allow the name of any person to be placed on the list of registered voters, called the registry of elections, in any ward or voting precinct in the state, unless in the following cases:

First—When the person whose name is to be registered, and also the facts of his legal qualifications as a voter in the ward, township or precinct in which such registry is made, shall be known to one or more of the persons acting as such board of registry, and the judge or person so acting on such board of registry to whom such voter and his legal qualifications are known, shall sign his name on the registry roll or list opposite the name of such voter, and the judge or person acting as a member of such board of registry so signing his name opposite the name of such voter shall be

deemed and held to have vouched, under oath, that such person so registered is a legal voter within the ward, township or precinct in which such registry is made; and such judge or person acting on such board of registry who shall sign his own name as aforesaid, shall be subject to the same liability, in all respects, as a person making affidavit under the provisions of the next following* subdivision of this section. But any person claiming the right to be registered as a legal voter in any ward, township or precinct, shall be so registered by the board of registry at any session of said board, excepting the last session, held the day preceding the ensuing election; *Provided*, Such person shall make personal application to so be registered, and take and subscribe before said board of registry the following oath:

I do solemnly swear (or affirm) that I am a citizen of the United States (or have declared my intention of becoming such, at least four months previous to this election); of the age of twenty-one years; that I shall have been a resident, at the date of this election, of the state for six months, and have not retained a home or domicile elsewhere; of this county for ninety days and of this precinct (or ward, as the case may be), ten days.

Second—When a legal voter, being registered in such ward, township or precinct, and known as such, by one or more of such judges or persons acting on such board of registry, or proven to be such by affidavit of some known legal voter, registered in such ward, township or precinct, in similar form to that herein following, shall make affidavit in substance as follows:

I,, do solemnly swear, in the presence of the ever living God, that I am a resident and a legal voter in ward (precinct), in the county of, state of Colorado, and that I well know, who aims to be registered as a legal voter in said: ward (precinct). and that I know he has resided in the state of Colorado during six months, in county ninety days last past, and has resided in said ward during ten days last past, and

still resides therein, and his place of residence is at No. street, in said ward (precinct), and I believe him to be of lawful age.*

The blanks therein filled with the proper names, dates, places and numbers, as the case may require, and such affidavit shall show that the person so offering to vote is, or will be by the day of election next ensuing, in all respects a legal voter in such ward or precinct.

[The above section is amended as to qualifications of elector by section 2146.]

Legislation. Sec. 2166. Act 1889 p. 154 § 1, amending G. S. § 1274. G. L. § 1051. The amendment read same as text down to the first star and after the second star. In the amended Act the paragraphs between the stars read as follows:

Secondly—When a legal voter being registered in such ward, township or precinct, and known as such by one or more of such judges or person acting on such board of registry, or proven to be such by affidavit of some known legal voter, registered in such ward, township or precinct, in similar form to that herein following, shall make affidavit in substance as follows:

I, ———, do solemnly swear, in the presence of the ever-living God, that I am a resident and a legal voter in ——— ward, (precinct), in the county of ———, state of Colorado, and that I well know ———, who aims to be registered as a legal voter in said ——— ward (precinct), and I know that he has resided in the state of Colorado during six months, in ——— county thirty days last past, and has resided in said ward during ten days last past, and still resides therein, and his place of residence is at No. ———, ——— street, (on ——— of section No. ———,) in said (ward) ———, (precinct) and I believe him to be of lawful age.

The text was framed on Act of 1874 p. 112 § 18. This Act 1874 repealed the original registration Act of 1868 R. S. p. 297.

CITATIONS.

Where a person is vouched for by one of the election judges as a legal voter, the judges have no discretion except to place the name upon the registration list.—*Peo. v. Dist. Court*, 33 C. 23, 78 P. 679.

2167. Judges meet to make registration—Time allowed.

SEC. 32. The judges of elections in the several wards and election precincts shall meet on Tuesday, three weeks before the

day upon which any general election shall by law be appointed to be held, at nine o'clock a. m. of said day, and proceed to make a registry list, as hereinafter prescribed, of the names of all persons qualified and entitled to vote at the ensuing election in the ward or precinct in which they are judges, which list, when completed and revised, as hereinafter provided, shall constitute the registry of electors of said precinct. Whenever, at the last election in any precinct, prior to the meeting of such board of registry, the number of votes cast in such precinct shall have exceeded three hundred, the said board may continue in session for the purpose of making such registry, five days if necessary; when the number of votes cast in such precinct shall have exceeded one hundred, the said board may continue in session, for the purpose of making such registry, three days if necessary, otherwise but one day.

[For registry in cities and towns, see sections 2171 to 2216.]

[In case of new precincts and division, see section 2170.]

Legislation. Sec. 2167. G. L. § 1035. G. S. § 1259.

Framed on § 1 Act 1874 p. 108.

2168. Form of lists—Copies—Return of lists.

SEC. 33. The list so made shall contain the names of the qualified electors of the ward or voting precinct in which the same is made, alphabetically arranged, according to surnames, so as to show in one column the name of each elector at full length, and in another the place of his residence, designated by the number or name of street, and number of house, if known, or the section or other subdivision thereof, according to United States surveys, on which such elector shall reside, if he reside on surveyed lands, and if not, such description as will best locate his residence. Said board shall enter on said list the names of all legally qualified electors in such ward or precinct, or of those who will become such, by lapse of time, on or before the next ensuing day of such general election, as aforesaid, in all cases in which such entry can be made consistent with the provisions hereinafter contained. For the convenience of the said board they are authorized to take from the office of the county clerk the poll list of such ward or precinct, filed by the judges of the last preceding election in such precinct.

Said board shall make four copies of such registry list when revised and completed, which list they shall certify to be correct, and forward one copy to the office of the county clerk, and retain two copies for use on election day; and one copy they shall, within two days from the completion thereof, post in some conspicuous place where the last election was held in such precinct, and so as to be accessible and convenient to any elector who may desire to inspect the same. The board of county commissioners may cause to be printed and published any such registry list when completed, at an expense not exceeding two cents per name thereon.

Legislation. Sec. 2168. G. L. § 1036. G. S. § 1260.
Framed on Act 1874 p. 108 § 2.

CITATIONS.

The statute contemplates that the registration lists shall only contain the names of qualified electors, and upon certiorari the court will order false names to be omitted.—*Peo. v. Dist. Court*, 33 C. 15, 84 P. 694.

2169. Board of registry meet to revise lists.

SEC. 34. Every board of registry shall meet on the Tuesday of the week preceding any and every general election, at the place designated for holding such election, for the purpose of revising, correcting and completing such registry list, and in all cases they shall meet at nine o'clock a. m., and remain in session until six o'clock of said day. Said boards of registry shall meet at the place designated for holding such election, on the day preceding the election, at nine o'clock a. m., and remain in session until six o'clock p. m. of the same day, at which time any elector whose name is not on the revised registry list may have his name placed thereon; *Provided*, He shall take and subscribe to the oath prescribed in section forty of this act, and shall prove by the oath of two registered electors of the precinct (or ward) that such person has been a resident of the precinct ten days, of the county thirty days, and of the state six months next preceding the day of election, and that they verily believe him to be a qualified elector. Said oaths shall be taken and subscribed to in the presence of the board of registry, either of whom may administer the

oath; and said oaths shall be preserved and filed in the office of the county clerk, together with the poll lists of said election. The name of such person and his residence, as given by him, shall be entered upon the registry list, and opposite the name of such person shall be marked the word "affidavit" and the names of the witnesses.

[Section 40 above referred to is found as amended as section 2254.]

Legislation. Sec. 2169. G. L. § 1037. G. S. § 1261. Act 1874 p. 109 § 2, provided for the revision meeting of the board.

CITATIONS.

It is the duty of the election judges to place upon the registration lists all names vouched for by one of the election judges, or who shall make the affidavit required and such election judges have no authority to strike any such name from the list.—*Peo. v. Dist. Court*, 33 C. 21, 78 P. 684.

2170. New precincts—Judges—Change of registration.

SEC. 35. In case any new election precinct shall be formed, the county commissioners shall immediately appoint judges of election therein; and in the case of the division of any voting precinct, the names of all voters residing in that part of any precinct stricken off shall be stricken from the registry list in the voting precinct from which such part shall have been stricken, and shall be inserted in the registry lists of the precinct to which such part may have been attached, at the first registration of voters' names in each such precinct respectively.

[See also section 2206.]

Legislation. Sec. 2170. Act 1874 p. 112 § 16. G. L. § 1050. G. S. § 1273.

2171. Revision of municipal registry lists.

SEC. 36. The persons appointed judges of election in every incorporated town or city, hereafter, shall meet on Tuesday of the week preceding each municipal election in town or city in which they are such judges, in the several precincts, at the place of holding municipal elections therein, for the purpose of revising, cor-

recting and completing the annual registry in this act required to be made, and for that purpose they are authorized to take from the office of the county clerk the last annual registry of electors of the wards or precincts, including the town or city in which they are appointed judges.

Legislation. Sec. 2171. Act 1874 p. 110 § 10. G. L. § 1044. G. S. § 1268.

2172. Registry how made—Filed with town clerk.

SEC. 37. The said last mentioned registrars shall, in all respects, proceed in the revising and correcting of their respective wards or precincts as is hereinbefore provided for in the revision and correcting of the annual registries, except that the registry list, as so revised and corrected by such city or town registrars, shall be filed with the city or town clerk of the proper city or town.

[For registration in cities of more than 2,000, see sections 2174 to 2216.]

Legislation. Sec. 2172. Act 1874 p. 111 § 11. G. L. § 1045. G. S. § 1269.

2173. Return of registries to county clerk.

SEC. 38. All registries taken from the county clerk's office under the provisions of the last section shall be returned to the county clerk within ten (10) days after the day of registry for which they may be taken out of the same.

Legislation. Sec. 2173. Act 1874 p. 111 § 12. G. L. § 1046. G. S. § 1270.

2. IN CITIES OF 2,000 TO 5,000 POPULATION**Section.**

- 2174. No person may vote unless registered.
 - 2175. Registration of female voters—Return of lists.
 - 2176. Questions to be answered by electors.
 - 2177. Elector write name or make mark.
 - 2178. Registration books.
 - 2179. Form of registration books.
 - 2180. Notice of completion of registration—Lists open to inspection.
 - 2181. Registration by county clerk—Vouchers—Certificate of registration.
 - 2182. Change of precincts or boundaries—New lists—Change of registration—Size of precincts.
 - 2183. Elector must be registered fifteen days before election.
 - 2184. Change of postoffice address.
 - 2185. County clerk's registration fees.
 - 2186. Registration lists given to election judges—Penalty for omitting name from list—Elector vote on production of certificate.
 - 2187. Poll lists checked—Names of electors not voting stricken—Reinstatement of elector.
 - 2188. Original registration in districts.
 - 2189. Masculine pronoun applies to both sexes.
 - 2190. Penalty for violation of act.
 - 2191. Repeal and saving clause.
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2174. No person may vote unless registered.

Sec. 39. No person shall hereafter be permitted to vote at any general or special election, whether national, state, district, county or city (excepting election of school trustees), held in any election precinct included wholly or partially within the limits of any city of the first or second class, or any other city, whether incorporated under general law or special charter, with a greater population than fifteen thousand (15,000) inhabitants, without first having been registered within the time, and in the manner and form, required by the provisions of this act.

[The provisions of the '94 act, included in this compilation between sections 2174 and 2191, are necessarily limited to cities with a population between 2,000 and 5,000 by section 2192.]

Legislation. Sec. 2174. Act 1894 p. 68 § 1, entitled:

AN ACT

To Provide for Establishing and Maintaining at Public Expense, Permanent Registration Lists of All Qualified Electors in Election Precincts Included Wholly or Partially within the Limits of Cities of the First and Second Classes, and all Other Cities with a Greater Population than Fifteen Thousand Inhabitants, and to Provide for Punishing All Violations Thereof, and to Repeal All Other Acts and Parts of Acts Inconsistent Therewith.

CITATIONS.

The provisions of sec. 2175 for the registration of a certain class of voters in cities of first and second class, did not extend to cities afterwards reaching that rank.—*Peo. v. Bates*, 24 C. 416, 51 P. 162.

In a prosecution for a violation of the provisions of the act of 1894, it was held the act of 1905, known as the Booth law, repealed the 1894 act. (The facts in the case applied to a city of over five thousand population, and the opinion does not consider the effect upon cities from two to five thousand population, of the repeal of the act of 1894.)—*Wilson v. Peo.*, 36 C. 420, 421, 85 P. 187. (Dissenting opinion 427).

This section cited in holding that while district courts may not supervise an election they have the jurisdiction to protect registration books from padding.—*Aichele v. Peo.*, 40 C. 488, 90 P. 1123.

2175. Registration of female voters—Return of registry lists.

SEC. 40. It shall be the duty of the board of county commissioners in each county in which any such election precincts are included, within 5 days after the first day of March, 1894, to employ canvassers, each of whom shall be a qualified elector in such precinct, not more than one to each precinct, and make and complete within twenty days thereafter, at the expense of the county, a full and accurate registration of all female persons who at that time are qualified electors in all such election precincts. Registration shall be taken by such canvassers in the same manner as at the office of the county clerk, except that they shall be taken upon separate sheets of paper, one sheet for each registration, instead of upon the permanent registration books. It shall be the duty of the several canvassers to return to the county clerk each morning the registrations taken by him on the previous day, and any can-

vasser who shall wilfully fail to return to the county clerk the sheets of paper showing such registration shall be deemed guilty of a misdemeanor for each registration sheet not so returned, and upon conviction shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment. It shall be the duty of the county clerk to enter daily all such registrations in the permanent registration books in his office for the respective precincts, and preserve in his office for the period of two years thereafter such original registration sheets. The county clerk shall, under the column of "Remarks," identify each such registration with the original registration sheet therefor.

Legislation. Sec. 2175. § 2 Act 1894, cited under § 2174.

CITATIONS.

Other provisions of the act and other authority than the board of county commissioners must be looked to for making permanent registration of the voters in cities that have, since its passage or may hereafter, come within the purview of this section.—*Peo. v. Bates*, 24 C. 416, 51 P. 162.

2176. Questions to be answered by electors.

SEC. 41. To entitle each qualified elector to be lawfully registered he shall be required to answer concerning each of the following matters: (1) Name in full; (2) Whether married or single; (3) Place of residence, which, if urban or suburban, shall be located according to its street number, or if there be no street number, then by the number and description of the lot or lots in the block or blocks in the addition, division or subdivision into which the land upon which the residence is located is divided; in all other cases the residence shall be located by the section or sections or subdivisions thereof, in the township and range as established and numbered by the United States government survey; (4) Whether owner of, tenant of or lodger with occupant of residence; (5) Whether a native born citizen of the United States, or, if a female, by marriage to a citizen of the United States, or by naturalization of self or parents; if the latter, state, as near as may be

to the best knowledge, information or belief of the applicant for registration, when self or parents were naturalized, the place of naturalization and by what court the naturalization papers were granted. Like answers shall also be made where only a declaration of intention to become a citizen has been made; (6) A description of his person, consisting of his height, age, sex, complexion, color of eyes and any other physical features by which he can be readily identified; (7) His profession, business or employment; (8) His postoffice address; *Provided, however.* It shall only be necessary for a female voter to state that she is twenty-one years of age in answer to all questions relating to her age.

Legislation. Sec. 2176. § 3 Act 1894, cited under § 2174.

2177. Elector write name or make mark.

SEC. 42. In the making of said registration by the board of county commissioners the writing of his own name by each elector shall not be required, but thereafter shall be in all other cases where the elector can write; if he be unable to write, he may make his mark and write his name with the assistance of the county clerk in the presence of his vouchers.

Legislation. Sec. 2177. § 4 Act 1894, cited under § 2174.

2178. Registration books.

SEC. 43. The board shall from time to time, as required, provide for each one of all such election precincts of the county, a book or books of convenient size and shape, arranged for the registration of names in alphabetical divisions, each alphabetical division to be composed of ruled columns with appropriate headings, under which the proper answers to the statements, made by each elector, in being registered in compliance with this act, shall be recorded. The names of electors as registered shall be numbered under each alphabetical division, consecutively, from one (1) upwards, and the date of registration shall also be recorded. There shall also be ruled columns under each one of said alphabetical divisions for the full names and registry numbers of those registered

electors who become vouchers for the purpose of securing the registering of electors, personally seeking to be thereafter registered; also a column with the heading "Registration Changed From," and sub-headings, "Election Precinct No.—," and "Registry No.—," whereunder in all cases of change of registration made necessary by change of residence of elector or change of boundaries, or establishment of new election precincts, shall be stated, the election precinct and registry number of the elector's last registration. There shall also be a ruled column headed, "Remarks," under which shall be briefly noted any important information affecting the registry of the elector whose name they follow, including any explanation of any erasure or other suspicious appearance in such registration, as well as the change in the registration of the names of electors from one election precinct to another, by reason of a change of residence, or a change of election precinct boundaries, or an establishment of a new election precinct or precincts.

Legislation. Sec. 2178. § 5 Act 1894, cited under § 2174.

2179. Form of registration books.

SEC. 44. The headings of each alphabetical division aforesaid, for each such election precinct, shall be substantially as follows, viz:

	Born of Citizen Parents	BIRTH		
	Self, Parents or Husband	NATURALIZATION		
				DATE
	City			PLACE
	County or District			
	Territory or State			
	Name of Court			
	Declaration or Final Papers			
	Feet	Height in inches	Age	
	Inches			
	Years			
	Complexion			
	Color of Eyes			
	Other Distinguishing Physical Features			
	Profession, Business or Employment			
	Postoffice Address			
	NAME	VOTERS		
	Register No.			
	Election Precinct No.	Registration Changed From		
	Registry No.			
	REMARKS			

No.	DATE OF REGISTRY		NAME IN FULL		MARRIED OR SINGLE		<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p style="text-align: center;">RESIDENCE</p> </div> <div style="width: 50%;"> <table border="1" style="width: 100%;"> <tr> <td colspan="2" style="text-align: center;">URBAN AND SUBURBAN</td> <td colspan="2" style="text-align: center;">COUNTRY</td> </tr> <tr> <td style="width: 50%; text-align: center;">M P</td> <td style="width: 50%; text-align: center;">Street or Ave. or if no Street Number</td> <td style="width: 50%; text-align: center;">Portion of</td> <td style="width: 50%; text-align: center;">Section No.</td> </tr> <tr> <td></td> <td style="text-align: center;">Lot No.</td> <td></td> <td style="text-align: center;">Township No.</td> </tr> <tr> <td></td> <td style="text-align: center;">Block No.</td> <td></td> <td style="text-align: center;">Range No.</td> </tr> <tr> <td></td> <td style="text-align: center;">Addition, Division or Sub-division</td> <td></td> <td></td> </tr> </table> </div> </div>						URBAN AND SUBURBAN		COUNTRY		M P	Street or Ave. or if no Street Number	Portion of	Section No.		Lot No.		Township No.		Block No.		Range No.		Addition, Division or Sub-division			Owner, Tenant or Employe Of, or Lodger With Occupant of Residence
URBAN AND SUBURBAN													COUNTRY																				
M P	Street or Ave. or if no Street Number	Portion of	Section No.																														
	Lot No.		Township No.																														
	Block No.		Range No.																														
	Addition, Division or Sub-division																																

(This form for Registry book is changed for cities of more than 1,000 population by 1908.)

Legislation. Sec. 2179. § 6 Act 1894, cited under § 2174.

2180. Notice of completion of registration—Lists open to inspection.

SEC. 45. Immediately after the completion of the registration by the board of county commissioners in all such election precincts it shall be the duty of the board of county commissioners to give public notice thereof by advertisement, for four successive insertions, through two newspapers, if there be so many published at the county seat or of general circulation in the county, representing, as far as practicable, the political parties which, at the preceding general election, cast the largest and next largest number of votes. Such notice shall also state that, for a period of sixty days next after the date of the first publication thereof, the record of such registration is at the office of the county clerk, open for inspection at any time during office hours, and that, upon application in person and without vouchers, any error or errors in the registration of any such elector will be corrected; *And, also.* That any such elector who has not been registered may, on like application, in person and without vouchers, be registered in his proper election precinct. It shall be and is hereby made the duty of the county clerk of each county, within the said period of sixty days, on the application in person of any such elector, to correct any and all errors in his registration; or, on like application of any elector, if he has not already been registered, to register him in his proper election precinct without requiring vouchers. All such corrections and registrations, and the time when made, shall be noticed by the clerk in the registration book on the same line opposite the name of such elector, and under the column headed "Remarks."

Legislation. Sec. 2180. § 7 Act 1894, cited under § 2174.

2181. Registration by county clerk—Vouchers—Certificate of registration.

SEC. 46. After the expiration of said period of sixty days mentioned in the preceding section no qualified elector shall be registered, nor shall his registration be corrected or changed, ex-

cept he make application to the county clerk as in this act provided. Such applicant must be vouched for by the oath or affirmation of two qualified electors already registered in the county clerk's office for such county, as possessing all the qualifications entitling such applicant either to be lawfully registered or to the desired correction or change therein, as the case may be. No registered qualified elector shall be accepted as voucher for more than twelve such applicants during any one calendar year, nor shall any registered qualified elector who is for any reason unable to write his signature be received or accepted as a voucher. The said county clerk, in the presence of both the applicant and of his said vouchers, shall take the answers of such applicant concerning all the matters required by section three (3) of this act, and then and there record the same (excepting the names of applicant and vouchers) in the registration book of the election precinct in which such elector then resides. Such record shall then and there be signed by the said applicant under the heading "Name in full," and by his said vouchers under the heading "Names of vouchers." If said applicant be for any reason unable to write his name, then the same may be written for him by the county clerk,

his
with.....X.....
mark

In all cases of correction of errors in or change in registration, such correction or change, and the date when made, shall be noted on the line after the name affected under the heading "Remarks." The form of the oath or affirmation to be administered to the said applicant and his vouchers shall be as follows: "We, (giving name of applicant), and we, (giving names of vouchers), each being severally duly sworn (or having affirmed, as the case may be), depose and say that the said..... (giving name of applicant) possesses all the qualifications of a lawful elector, and is entitled to be registered as a duly qualified elector or to correct his registration as to the.... (here state the matter corrected) or to have his registration changed to or of (as the case may be) precinct in county, state of Colorado. That

the record of such registration which we have signed was made by the clerk of said county or his authorized deputy in our presence and in the presence of said applicant for registration, and is true and correct, and was in all particulars made in full conformity with this registration law." Such oaths or affirmations need not be written out or preserved, but the said vouchers shall, by their signatures in the place provided by this act on said registry book, be conclusively deemed in law to have duly verified the registry, correction or change therein, of any elector whose name they follow as vouchers, in substance, manner and form as aforesaid, and shall accordingly be liable for any and all penalties and punishments provided by law for false or illegal vouching under this act. Said registry book, or a certified copy of the registry or correction therein of any name or names, shall be admissible in evidence as proof of the taking of the said oath or affirmation in all cases of criminal proceedings for the punishment of false or illegal vouching or registration under this act. Upon request of any registered voter it shall be the duty of the county clerk to make out and deliver to such voter a certificate of the registration of such voter, setting forth the fact of such registration, including the date of registration, description and other information recorded in connection with the registration of such voter, which certificate shall be attested by the hands of the county clerk and the seal of the county; and the county clerk shall be allowed a fee of ten cents for each such certificate, to be paid by the applicant. Such certificate, together with proper proof of identity of the person therein named, may be used when such person becomes a voucher for another applicant for registration, and also as prima facie evidence of the facts therein stated. When any registered voter removes from the county where he is registered under the provisions of this act, upon his request he shall be entitled to have his name cancelled upon such registration list, and shall thereupon be entitled to a certificate, similar in form and substance to the certificate hereinbefore mentioned, and also showing the fact of such cancellation, which certificate shall be prima facie evidence of the facts therein set forth, for which certificate a like fee of ten cents shall be paid to the county clerk by the applicant.

Legislation. Sec. 2181. § 8 Act 1894, cited under § 2174.

2182. Change of precincts or boundaries—New lists—Change of registration—Size of precincts.

SEC. 47. Whenever the board of county commissioners of any county shall change the boundaries of or create a new election precinct or precincts, wholly or partially within the limits of any city of the first or second class, or any city having a population greater than fifteen thousand (15,000) inhabitants, it shall be and is hereby made their duty to forthwith cause to be prepared, at the expense of the county, complete or new registration lists, in conformity with such change, of all registered electors in each and all of said changed and new election precincts. Such new registration lists shall be made by red-lining off from the former precinct registry, and by copying off into the proper election precinct registry the names of those already registered in the former precinct registry, who are thereby shown to be residing in another election precinct than the one wherein they were lawfully registered before said change or changes were made. Such change or transfer so made necessary by change in or creation of any election precinct shall be noted by the county clerk in the registry of the names so transferred, under the head "Remarks," giving the date of the action of the board of county commissioners ordering such change in the registration. Whenever any registered qualified elector shall change his residence from one election precinct to another, he shall be entitled to have his registration changed in accordance with his change of residence upon making application in person to the county clerk at any time; but he shall not be required to present any voucher as to this change of residence unless the same be to a different election precinct, and such application to change registration be made within fifteen (15) days of the next election in the precinct of his new residence, in which case there shall be two vouchers to such change of residence, who shall make oath or affirmation thereto, as in other cases. An application for change of registration made before within fifteen (15) days of the ensuing election may be granted, and change made without vouchers. The record of such registration in case of change of residence by a registered elector shall be made the same as his registration record in the election precinct from which he moved, excepting that the names of the vouchers, if any, which were first given to secure

the registration of such elector may be omitted, and in their stead shall be written the signatures of his last vouchers, with the words "as to residence" immediately upon their signatures, which shall indicate that they only vouch as to the residence of such elector. The county clerk shall notice each such change of residence under the appropriate column, as required in such cases by the provisions of section five of this act. At the time prescribed by law the officers charged by law with the division or alteration of the election precincts in precincts included wholly or partially within the limits of any city of the first or second class, whether incorporated under the general law or special charter, and all other cities with a greater population than fifteen thousand (15,000) inhabitants shall alter or divide the existing election precincts whenever necessary in such manner that each election precinct shall contain not more than five hundred (500) voters.

[Section 5 above referred to is section 2178.]

[See note, section 2174.]

Legislation. Sec. 2182. § 9 Act 1894, cited under § 2174.

2183. Elector must be registered fifteen days before election.

SEC. 48. Any qualified elector who has not been registered at least fifteen (15) days before the holding of the next general or special election in his precinct, or had his registration changed or corrected at least ten (10) days before the holding of the same, shall not be entitled to vote at such election, and the county clerk in preparing the registry book for the respective election precincts, shall omit therefrom all such names so registered.

Legislation. Sec. 2183. § 10 Act 1894, cited under § 2174.

2184. Change of postoffice address

SEC. 49. A change in the postoffice address of any elector as registered may be made at any time without vouchers, provided the same shall be noted under the head of "Remarks," in the line following such person's registration.

Legislation. Sec. 2184. § 11 Act 1894, cited under § 2174.

2185. County clerk's registration fees.

SEC. 50. The county clerk of each county shall be authorized to receive from the county the sum of ten cents for the making of each original registration, and ten cents for each change made therein on the application of any qualified voter in pursuance of the provisions of this act. A fee of ten cents for each name transferred from one precinct registry to another may also be collected from the county by the county clerk, for preparing and completing new registration lists, to conform to the changes of boundary or establishment of new election precincts.

Legislation. Sec. 2185. § 12 Act 1894, cited under § 2174.

2186. Registration lists given to election judges—Penalty for omitting name from list—Elector vote on production of certificate.

SEC. 51. It shall be the duty of the county clerk in any county wherein any such city is situate, at least three (3) days before the day of any election therein, whether national, state, district, county or city, or whether general or special (excepting election of school trustees) to make full and complete certified copies of the registration lists of the qualified voters in their respective election precincts for use in the holding and conducting such election upon the day thereof, and deciding who shall be entitled to vote thereat, and to deliver such lists to the election judges for the proper precinct one day prior to such election. To each of such copies so delivered to the said election judges it shall be the duty of the county clerk to attach his certificate under the seal of his office, setting forth that the said copy contains a full, complete and accurate list of the qualified voters in each such election precinct as the same appear upon the original registration books on file in his office. Each such county clerk shall forfeit the sum of ten dollars for each and every name incorrectly omitted from or added to any such copy, in case of an omission the said sum to be recovered by the party whose name is so incorrectly omitted in an action brought by him against said county clerk, in any court of competent jurisdiction in the county, and for each and every name so incorrectly added to such copy, the said sum to be deducted by the county com-

Commissioners of such county from any amount due by the said county clerk. It shall be the duty of the board of judges for each precinct included within any such city for a election to call in person at the office of the county clerk recorder one day prior to such election for the purpose of receiving such copy of the registration list. Said registration lists shall be furnished to said judges in a sealed envelope, which said envelope shall not be opened until the morning of election day at the place in the presence of the judges. Which copy shall be delivered to two judges, one belonging to the political party which cast the highest number of votes in the last similar election in said city or city, and the other belonging to the party which cast the highest number of votes at such election, and both such judges shall receipt to the county clerk for such copy of the registration lists, and they shall receive mileage for such service at the rate of ten cents per mile for each mile actually traveled. The county clerk shall be allowed a fee of ten (10) dollars for each precinct for which he shall furnish such copy of registration lists, to be paid by the county: when such lists are furnished to the judges of any city election for city officers or other city purposes only, such city shall pay to the county the sum of ten (10) dollars for each precinct the registration list of which is so furnished. Any voter whose vote is rejected because of any error made in transcribing the official registry shall be entitled to vote upon producing to the judges of election a certified copy of his registration showing his right to vote.

Legislation. Sec. 2186. § 13 Act 1894, cited under § 2174.

CITATIONS.

The supreme court refused to issue a writ of prohibition to prevent a district court from proceeding in a matter of contempt by a clerk who disobeyed an injunction restraining him from certifying false names.—*Atchelle v. Johnson*, 30 C. 462 P. 367.

2187. Poll lists checked—Names of electors not voted stricken—Reinstatement of elector.

SEC. 52. Within thirty days next after each election in precincts included within the limits of any such city, the county clerk

and recorder of the county shall proceed to check the poll list of persons who voted in each such election precinct with the registration list for such precinct, and shall in some proper manner mark and designate the names of the persons not shown by said poll list to have voted at such preceding election in such precinct. The county clerk shall thereupon make out a list of all such names of persons, together with their residence, so appearing not to have voted at such preceding election, which list shall be made out in alphabetical order of the last names of such electors and in consecutive numbers, according to election precincts and districts, and shall have appended thereto an affidavit by such county clerk that such list has been compared with the official registration lists in the county clerk's office and is a full, true and correct list of the names of such persons not voting at such election. Said list shall be entitled "A list of registered electors appearing not to have voted at the.....election held..... (date).....in the.....of....." Said list shall be certified to and filed with the board of county commissioners. It shall be the duty of the county clerk to immediately send notice by mail to each elector whose name may appear upon said list. Said notice shall be in substance as follows: "You are hereby notified that a comparison of the registered electors in the several precincts with the poll lists for such election precincts show that you did not vote at the election held the.....day of18.. Any qualified elector may have his name retained on the registration lists by appearing before the board of county commissioners on either one of the following days, to-wit:and showing to the satisfaction of said board either that he did vote at such election, or that he was entitled to a vote thereat, because still a qualified elector in such precinct. Failing to appear, his name shall be struck from the registration list." The board of county commissioners shall fix three separate and not consecutive days within thirty days after the date of such notice, on which it will sit for the purpose mentioned in said notice, and at each of said sittings said board shall continue in session from day to day so long as there are persons appearing before it for hearing in accordance with such notice. At the close of such hearing the board of commissioners shall cer-

tify to the county clerk a list of names of persons who have cause for the retention of their names on such registration. It shall be the duty of the county clerk, upon the receipt of a certified list from the board of county commissioners, to for strike such names from the registration lists in the proper precincts, of persons who have not so shown cause for retention, by ruling a red ink line through such name with the notation in the column for "Remarks," that such names were stricken out in pursuance of the county commissioners' certificate of a given date.

Legislation. Sec. 2187. § 14 Act 1894, cited under § 2174.

2188. Original registration in districts.

SEC. 53. The board of county commissioners of any city wherein any such city is situate are hereby directed to group registration districts a number of election precincts, not less than eight nor more than twenty, in each registration district. It shall be the duty of the county clerk to appoint a deputy or deputies to exceed two, for each such registration district, which deputies shall attend and be present in such district, for the purpose of receiving original registrations before each such election on the third Tuesday before such election, and from that day to thereafter, for not less than three nor more than five days in and between the hours of noon and nine o'clock p. m. of each day. The county commissioners shall provide a suitable room in each district and all necessary stationery and appurtenances for the use of such deputy county clerks. The county clerk shall give public notice for three days by publication in at least two newspapers, belonging to different political parties, of the name of each deputy, and the time and particular place in each district where such registration will be carried on. Such deputy shall be provided with separate sheets of paper suitably ruled to record all information elsewhere required in this act for original registrations in the county clerk's office. Registrations shall be taken before such deputies in the same manner as at the office of the county clerk, except that they shall be recorded upon separate sheets of paper, one sheet for each registration, instead of upon permanent registration books. It shall be the duty of the sev-

deputy county clerks to return to the county clerk each morning the registrations taken by him on the previous day, and any deputy who shall wilfully fail to return to the county clerk at or before the closing of registration in such district the sheets of paper showing registrations shall be deemed guilty of a misdemeanor for each registration sheet not so returned, and upon conviction shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment. It shall be the duty of the county clerk to enter daily all such registrations in the permanent registration books in his office for the respective precincts, and preserve in his office for the period of two years thereafter such original registration sheets. The county clerk shall, under the column of "Remarks," identify each such registration with the original registration sheets therefor.

Legislation. Sec. 2188. § 15 Act 1894, cited under § 2174.

2189. Masculine pronoun applies to both sexes.

SEC. 54. Wherever in this act the masculine pronoun is used it shall be construed to apply to women as well as men.

Legislation. Sec. 2189. § 16 Act 1894, cited under § 2174.

2190. Penalty for violation of act.

SEC. 55. Except as otherwise provided in this act, any person who shall make false answer, either for himself or another, or who shall violate or attempt to violate any of the provisions of this act, or knowingly permit another to violate the same, or any public officer or officers upon whom any duty is imposed by this act or any of its provisions, who shall wilfully neglect such duty, or who shall wilfully perform it in such a way as to hinder the objects and purposes of this act, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, and if he be a public officer shall forfeit his office.

Legislation. Sec. 2190. § 17 Act 1894, cited under § 2174.

CITATIONS.

This section quoted in dissenting from an opinion that the Booth act of 1905 repealed the act of 1894.—*W. Peo.*, 36 C. 427, 85 P. 190.

2191. Repeal—Saving clause.

SEC. 56. "An act to provide for establishing and maintaining at public expense permanent registration lists of all qualified electors in election precincts included wholly or partially within the limits of cities of the first and second classes, and in all cities with a greater population than fifteen thousand inhabitants, and to provide for punishing violations thereof," approved March 13, 1891, and all acts amendatory thereof, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed; *Provided*, Nothing herein shall be construed as a repeal of any act concerning registration in its application to election precincts not included within the limits of cities of the first and second classes and population mentioned in section 1.

[Section 1 referred to is section 2174.]

Legislation. Sec. 2191. § 18 Act 1894, cited under § 2174.

This section repealed the registry act of 1891 p. 172. Both the original and the repealing act had practically the same title and were confined to such cities as are mentioned in the titles.

3. IN CITIES OF MORE THAN 5,000 POPULATION.

Section.

- 2192-A. Registration compulsory, except for school elections.
- 2192-B. Definition of words and phrases.
- 2192-C. Registration committee—Form of oath.
- 2192-D. Submission of names from each party.
- 2192-E. Names selected from lists.
- 2192-F. Removal of member of committee—Neglect of duty—Committee proceedings.
- 2192-G. Certified copy registration book—Completion of registration.
- 2192-H. Schedule of interrogatories to electors.
- 2192-J. Close of polls—List of votes.
- 2192-K. Returns to county clerk—Posting—Copies to chairman.
- 2192-L. Change of residence.
- 2192-M. Purging the list—Corrections—Appeal to court.
- 2192-N. Petition for judicial correction of registry—Form of proceeding—Procedure—Misdemeanor.

3. IN CITIES OF MORE THAN 5,000 POPULATION.

Continued.

- 2192-O. Sworn return of registration committee.
 - 2192-P. Blank books.
 - 2192-Q. Headings and form of registration books.
 - 2192-R. Copies of registration book and election laws to county clerk.
 - 2192-S. Election supplies.
 - 2192-T. County clerk make rules.
 - 2192-U. Registration committee call for books.
 - 2192-V. Election precincts.
 - 2192-W. City elections—Duties of city clerk—Notices.
 - 2192-X. Special elections—Bonds—Franchises.
 - 2192-Y. Registration for next election.
 - 2192-Z. Temporary registration committee.
 - 2192-AA. Fees of county clerk and registration committee clerk.
 - 2192-BB. Custody of books and papers.
 - 2192-CC. One clerk to each of two parties.
 - 2192-DD. Watchers and challengers.
 - 2192-EE. Judicial petition to settle controversies.
 - 2192-FF. Penal sections apply to all elections.
 - 2192-GG. Violation of act—Punishment.
 - 2192-HH. Duty of district attorney.
 - 2192-JJ. Perjury.
 - 2192-KK. Irregularities no defense—Judicial notice.
 - 2192-LL. Power of attorney general.
 - 2192-MM. School fund.
 - 2192-NN. Classification of cities.
 - 2192-OO. Liberal construction of act.
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2192-2216. (Repealed.)

See notes to §§ 2192-A-2192-OO.

2192-A. Registration compulsory except for school elections.

SEC. 57a. No person shall hereafter be permitted to vote at any primary, or general or special election provided for by law, whether national, state, district, county, city, city and county, or town, for candidates for office, or upon constitutional or charter amendments, or public franchises or the issuance of bonds, or other questions, matter or measure submitted to the vote of the qualified electors, held in any election precinct included within the limits of cities with a greater population than five thousand

inhabitants, without first having been registered within t
and in the manner and form required by the provisions
act; *Provided*, That this act shall not apply to elections c
ing schools.

Legislation. Sec. 2192-A. § 1 of Act of 1911 S. B. No. 254,

AN ACT

Concerning Elections, and To Provide for the Appointment of Reg
Committees and Judges of Election, and the Registration of All
Electors in All Said Elections, and to Provide for Punishing Al
tions of the Provisions of This Act, and to Repeal All Acts in
With the Provisions of This Act. (Approved May, 30, 1911.)

The text is a substitute for § 2192, which was § 1 of Act of 190
known as the Booth Bill. It is more specific than the old section in
ating elections, to which it applies, brings in primary elections un
Act of 1910, and apparently applies to all elections except electio
cerning schools.

CITATIONS.

In a prosecution for a violation of the act of 1894 (Se
et. seq.) held that the act of 1905 repealed the act of 1894.
facts apply to a city of over five thousand population, a
opinion does not discuss the effect upon cities of from
five thousand population, of a repeal of the act of 1894.)
son v. Peo., 36 C. 420, 85 P. 187. (Dissenting opinion 42

The act of 1905 and the amendment of 1907 held co
tional.—*Peo. v. Earl*, 42 C. 256, 266, 94 P. 300.

2192-B. Definition of words and phrases.

SEC. 57b. The words and phrases of this act, unless the
be inconsistent with the context, shall be construed as
lows:

a. The words, "Registration Committee," and the w
"Judges of Election," to mean the three persons provided
appointed by this act; a "majority" of the registration comm
to mean two members thereof representing opposite political
ties.

b. The words, "County Clerk," to mean the recorder of
county.

c. The word, "City" means also any city and county cre
by any constitutional amendment, and coming within the
visions of this act.

d. The population of cities shall be determined by the latest federal census.

e. The words, "County Commissioners" mean the board of county commissioners of each county.

f. In computing time for any act to be done before any election as provided hereunder, the first day shall be included, and the last day, to-wit, election day, shall be excluded. If the time for any act to be done, as provided herein, shall fall on Sunday or a legal holiday, such act shall be done upon the day following such Sunday or legal holiday, and such Sunday or legal holiday shall not be included in any given number of days designated as the time in which any act is to be done or performed, as provided in this act.

g. The words, "election," or "election day" mean any election within the provisions of this act, other than a primary.

h. The words, "preceding election" mean the last election, except a primary, held for candidates for office which was within the provisions of this act, and irrespective of whether it was a similar election or not.

i. The words, "general election" mean any general state, county or city election for the election of officers, but not a primary.

Legislation. Sec. 2192-B. § 2 of Act of 1911, cited under § 2192-A. It covers the same ground as § 2193, which was Act of 1907 p. 374 § 1, which amended Act 1905 p. 189 § 2.

CITATIONS.

Paragraph 6 of sec. 1 of the act of 1907 gives a clear statement of the rule to be adopted in the construction of all requirements which are not expressly mandatory.—*Peo. v. Earl*, 42 C. 249, 99 P. 289.

By sections 1 and 24 of the act of 1905 that act was expressly made applicable to municipal elections in the city of Denver.—*Peo. v. Youngs*, 43 C. 339, 95 P. 1069.

2192-C. Registration committee—Form of oath.

SEC. 57a. a. The registration of electors in each of the several precincts shall be made by a committee consisting of three qualified electors to be called the "Registration Committee," or by a majority

of the registration committee, to be appointed for each of said precincts as herein provided. The registration committee shall also be judges of election at any primary, general or special election next following their appointment and during their term of office.

b. The registration committee shall in accordance with the provisions hereof be appointed by the county clerk for each of the precincts in the county on the first Tuesday in July, 1912, and upon the same day every two years thereafter in the manner herein provided, and the county clerk shall make and file in his office a list of each and all persons so appointed, their names, business, post-office and residence addresses and precinct and ward.

c. Between the first day of May and the third Tuesday in June, 1912, and during said period every two years thereafter, the county chairman of each of the two political parties in each county having cast the highest number of votes for governor at the last general election for state officers, shall, in accordance with the provisions hereof, certify to the county clerk the names of not less than three nor more than six qualified electors in each of the precincts in such city, county or city and county, together with the postoffice, residence and business address of each of such persons so certified. Each chairman shall also certify that at least two of the persons named are willing to serve upon the registration committee in their precincts respectively. Each county chairman shall designate the order of his choice of such names for service upon the registration committee in each precinct, and the persons so first designated by the two county chairmen shall be chosen by the county clerk as members of the registration committee. One of such political parties shall be entitled to the third member of such committee in all even numbered precincts, and the other in all odd numbered precincts, and it shall always be the duty of the county commissioners to number such precincts consecutively, beginning with number one (1) in each ward, district or political division of the cities within the provisions of this act. On said first Tuesday in July, the county clerk, or any deputy designated by him for that purpose, shall determine by lot which of such political parties shall be entitled to the third member of the committee in the various precincts. The third member of the registration committee shall be the choice of the county chairman, if such choice be designated,

and if not, the county clerk may select any one of said names. If for any reason any one selected to act upon the registration committee refuses, fails or is unable to act at any time within forty-eight hours before any election, or primary, it shall be the duty of such member of the committee, or any member of the committee, to notify the county clerk, whereupon the county clerk shall forthwith, in the most speedy and convenient method, notify the county chairman of the political party to which such member belongs, whereupon it shall be the duty of the county chairman of such political party to forthwith indicate to the county clerk the name of some other elector in such precinct to act in the place of such person. If it is impossible to notify such county chairman of any such vacancy in the committee during the time of registration, two members of such committee, if a majority thereof, shall perform the duties of such committee until such vacancy is filled as provided herein. If there shall not be a majority of such committee remaining, in such contingency the county clerk shall designate to act upon such committee, pending the filling of such vacancy as provided herein, some qualified elector in said precinct belonging to the party entitled to such representation, so as to constitute a majority of the registration committee: *Provided, however,* That the county clerk must designate some person who was named originally by the county chairman in the list submitted as herein provided, if any such person be willing to act. If there be no county chairman in any county so that there can be no specific compliance with the provisions of this act as to appointment of registration committees or judges of election, the county clerk shall make such appointments as near in compliance with the intention of this act as possible, obtaining such list of names from precinct committeemen of such party, if any, and if not, then selecting representatives of such political organization as may be entitled to representation on such committees. If a vacancy in such committee should occur upon the day of any election or primary, by failure of any member of such committee to appear at the polling place at the time provided by law for the opening thereof, the vacancy shall be filled by vote of the bystanders as now provided by law; *Provided, however,* That if such member of the committee shall appear at the polling place within thirty minutes from the opening thereof, he

shall be entitled to act upon such committee as such judge; such event the election judges shall make note of such fact official returns from such precinct. In no event shall any be so selected because of such vacancy on the day of any election permitted to act for a longer period than during such election primary, but as soon thereafter as the duties of such judge; particular election, or primary day are discharged, any vacancy be filled in the manner herein provided.

d. Within five days after the time provided herein designation and appointment by the county clerk of the of such registration committee, it shall be the duty of the clerk to issue three certificates under his official seal certifying the appointment of such committees in each precinct as herein. Such certificate shall contain the name, business office and residence address of the members of such committee in each precinct, with a statement under the seal of the clerk that they were selected by him in accordance with the provisions of this act, one of which certificates shall be mailed by the clerk to each of the members of such committee addresses postoffice address. It shall also be the duty of the clerk within the said five days to transmit by mail to each of the respective county chairmen of the two principal political parties aforesaid a true, exact and certified copy of the list of members of the registration committee appointed as herein provided. Original of such lists on file in the office of the county clerk, all other registration lists of names and election records, public records and subject to the inspection and examination during office hours, by any elector of the state, and to the making of copies thereof.

e. With the certificates transmitted or delivered to the county clerk to the members of the registration committee in the precincts respectively, there shall be enclosed the form hereinafter set forth, which shall be filled out and signed by a member of such committee and returned and filed in the office of the county clerk within five days after the date of receipt of the form of oath by said registration committeemen, and it shall be a public record. The oath to be taken and subscribed by the members of the registration committee shall be substantially as follows:

I,, do solemnly swear (or affirm) that I am a citizen of the United States and the state of Colorado, of the county of, city of; that I have resided within the limits ofprecinct, ward (or district), for at least six months last past; that I am a bona fide member of the party; that I will faithfully perform the duties required of a member of the registration committee and judge of election in election precinct, ward (or district), in the city of, county, Colorado, according to law; that I will not wrongfully omit from registration the name of any qualified elector; and, that I will not knowingly register anyone who is not legally entitled to register, so help me God.

f. The oath provided for in this act shall be taken before any person authorized to administer oaths. No person shall be qualified as a member of such registration committee, except in case of vacancy within forty-eight hours before election or primary day, or as otherwise provided in this act, until such oath has been duly subscribed, sworn to or affirmed and filed as herein provided. If any person selected to act upon the registration committee shall fail to subscribe, swear to or affirm and file such oath or affirmation as herein provided, within five days from the time of his appointment, the county clerk shall forthwith notify the county chairman of the political party who may have designated, or who may have been entitled to designate such member of the committee, and upon failure of such person to comply with this section within forty-eight hours thereafter, such failure shall constitute a vacancy. In the case of a person properly designated as registration committeeman, as herein provided, or appointed to fill vacancy, where no person authorized to administer oaths is available, it shall be deemed sufficient for the different registration committeemen to administer the required oath, one to another.

Legislation. Sec. 2192-C. § 3 of Act of 1911, cited under § 2192-A.

Substitute for § 2194, which was § 1 of Act of 1907 p. 375, amending Act of 1905 p. 194 § 3.

2192-D. Submission of names from each party.

SEC. 57d. Ten days before the time necessary for a chairman to submit to the county clerk the names of members of the registration committee as provided by sub C of section 3 of this act, and at such other times as necessary in order to comply with the provisions and intent of this act, the county chairman of the respective parties entering representation upon said registration committee shall deliver in writing of the precinct committeeman in each precinct, the names of not less than three nor more than six qualified electors who reside in the precinct to act as members of the registration committee, whereupon it shall be the duty of such committeeman to do so, with, and in no event to exceed five days from the time of demand, to submit such lists in writing with the names and addresses in substantial compliance with the provisions of this act. The county chairman shall furnish blank forms to each committeeman for the submission of such lists, which shall be substantially as follows:

"To.....

County chairman of the.....party.

In accordance with the election laws of....., 19..... section four (4), I submit herewith not less than three nor more than six names to be transmitted by you to the county clerk, suitable members for the registration committee in precinct

....., ward (township, or district, as the case may be)..... (Name)..... (Post office address)..... (Business address).....

I further certify that said persons so designated are known by me to be members in good standing of the..... party; reside in the said precinct and are qualified electors in this county.

Committeeman of the.....party for precinct
....., ward (township or district).....,
county of.....

Legislation. Sec. 2192-D. § 4 of Act of 1911, cited under § 2192-A.

The text does not correspond with any specific section of the Act of 1905 or its amendments in 1907, and from this on the Act only occasionally corresponds, section for section, with other Acts.

The principal changes made by the text of the new Act are to dispense with the house to house canvass and to require no new registration where the elector keeps his registration alive by voting.

2192-E. Names selected from lists.

SEC. 57e. It shall be the duty of the county chairman at all times in recommending persons for members on the registration committee to select only such names as are filed with him by the precinct committeemen in accordance with section 4 of this act, it being the intention of this act that the members of the registration committee shall be appointed from the lists submitted by the precinct committeemen; *Provided*, That if such precinct committeeman shall fail or neglect to comply with the provisions of this act in making due responses to the request of the county chairman to furnish such names to the county chairman, then in such event the county chairman may select such members of the registration committee for any such precinct to be designated to the county clerk.

Legislation. Sec. 2192-E. § 5 of Act of 1911, cited under § 2192-A.

Framed on § 2195, which was § 4 of Act of 1905 p. 194.

2192-F. Removal of member of committee—Neglect of duty— Court proceedings.

SEC. 57f. a. Any member of the registration committee or election judges may be removed in either of the following ways:
(a) Upon the filing of a statement with the county clerk by the county chairman of the political party in whose behalf said member was appointed, that after investigation, he is of the opinion that his party is not faithfully or fairly represented by said com-

mitteeman. Upon the filing of said statement it shall be the duty of the county clerk to forthwith notify such committeeman of the removal and the cause thereof; when his successors shall be appointed as in other cases.

b. If any member of such registration committee or election judge has neglected his duty in attending to such registration, has committed, encouraged or connived at any frauds in connection therewith, or has violated any of the election or primary election laws, or has knowingly permitted others to do so, or has been convicted of any crime, or has violated the oath provided herein, or has wrongfully hampered or interfered or tends to interfere with the due and regular performance of the duties of such registration committee or any member thereof, or committed any other act which interferes or tends to interfere with carrying out the purposes of this act to provide a fair and honest registration and election or primary election, or if the appointment of any member was not made in accordance with the provisions of this act, such member may be removed from said committee in the following manner:

A brief petition by the person making such charge shall be filed in the district or county court of the county at any time, provided such time is at least five days before any election or primary election, setting up in brief and concise language the facts constituting the cause for the removal of such member of the committee; whereupon the court shall issue a citation to such registration committeeman or judge of election directing him to appear at a time within forty-eight hours thereafter to answer such petition, if he desires so to do. The court shall proceed summarily to hear and finally dispose of such petition, and within forty-eight hours of the time of the filing of the answer may hear evidence in relation thereto. If the court shall decide that such registration committeeman or judge of election ought to be removed for any cause stated in the petition, it shall be so ordered and he shall notify the county clerk thereof forthwith, whereupon the chairman and county clerk shall forthwith fill the vacancy as provided herein for original appointments upon said committee.

Such petition shall be verified, but the verification may be

upon information and belief. Any evidence given by any such accused registration committeeman or judge of election as a witness for petitioner at such hearing, or the result thereof, shall not be used against him in civil, criminal or other proceedings.

c. Upon the failure or neglect of the members of such registration committee, or a majority thereof, to make the canvass and return the same to the county clerk, according to law, or to otherwise perform the duties provided by this act to be performed by such registration committee and the members thereof, it shall be the duty of any member of such registration committee, any county chairman of a political party organization, or any elector in the precinct for which such registration committee and each member thereof is appointed, having knowledge of such failure or neglect, to cause proper action for removal to be instituted against such member of said committee. It shall also be the duty of the county clerk to take prompt and immediate action in all such cases coming to his knowledge. Any vacancies occurring in such registration committee for any cause shall be filled in the same manner and with like effect as said committee is provided to be originally constituted and appointed. The validity of any part of the registration already completed, or other acts done or provided hereunder, if otherwise legally done, shall not be affected by the removal of a member of such committee, but the same shall be in every respect valid and regular, and the successor of any such person removed, or retiring from such committee for any cause, shall proceed with such canvass and the other duties of such committee with like power and effect as though originally appointed as a member of such registration committee.

Legislation. Sec. 2192-F. § 6 of Act of 1911, cited under § 2192-A.

2192-G. Certified copy registration book—Completion of registration.

SEC. 57g. One day prior to the beginning of precinct registration, the county clerk shall deliver to a majority of the registration committee a true copy of the registration book used at the next preceding election, and containing the names of all those who

voted at the preceding election, with the exception of those whose names have been stricken by the county clerk under the provisions of this act. The clerk shall attach to each of said registration books a certificate substantially as follows:

"I hereby certify that the within copy of registration for precinct....., ward or district.....,county, Colorado, containing.....names, is a true and correct list of all the voters in said precinct who voted therein at the last general election and whose names appear on the original registration book of said precinct in my office.

.....
County Clerk.

On the fourth and third Thursdays preceding the day of election or primary election, said registration committee shall sit at some suitable place to be provided by the county commissioners, selected in accordance with the methods and law of the state for the providing of polling places for election, which place shall be as far as practicable, centrally located within the precinct, from nine o'clock a. m. until nine o'clock p. m., and shall proceed to complete said registration list in accordance with the provisions of this act, it being the purpose and intent of this act that any elector who has once been registered shall not have to again register for any primary election unless he shall have failed to vote at the preceding general election, and at said times they shall place on their registration books the names of all qualified electors of their precinct, who are not already on the registration, after the following manner:

First—All who shall present themselves in person for registration and take the form of oath herein provided for, and comply with the provisions of this act respecting registration.

Second—Any elector who is already registered, whether by virtue of having voted at the preceding election, or has appeared in person and registered at the time the registration committee is sitting, and who is personally known to the registration committee,

may register any person or persons to the number of not more than three (3), who reside and have resided at the same address for at least ninety (90) days last past, by signing such name or names on the list and thereafter signing his own name as voucher, in the presence of a majority of the registration committee, and by making oath as follows:

"I,, do solemnly swear by the ever-living God (or affirm) that I am a citizen of the United States and a qualified elector in ward..... (or district), precinct....., in the county or city and county of.....; that I am registered from No.....street, and a resident of that address. That.....(name of person or persons), whose names I have caused to be placed on the registered list of qualified voters from the same address in this precinct, reside at such address, and have resided there for ninety (90) days last past, and are qualified electors entitled to be registered and to vote from such address in such precinct, at the ensuing election."

In all cases where electors are permitted to be registered by vouchers, the person so vouching for them, as far as known by them, shall furnish the information required concerning such elector, which shall be filled in the blank spaces provided for that purpose in the registration book.

All registrations shall be made in ink and shall be made only in the registration book furnished by the county. Except as herein otherwise provided, each elector registered shall answer the questions concerning all the matters required by section eight (8) of this act and sign his or her name, or, if unable to write, make his or her mark, and the answer so made by the elector shall be entered in the registration book by the members of the registration committee selected or directed by the committee to make such entries, in the proper place, and shall, together with the signature of the elector be attested by at least one member of the registration committee, the elector first taking the following oath before one of the mem-

bers of said registration committee, all of whom are hereby empowered to administer such oath or other oath necessary to the performance of their duties under this act or the carrying out of its provisions:

"I,, do solemnly swear (or affirm) that on the date of the next ensuing election I shall be over the age of twenty-one years and shall have resided in the state of Colorado at least twelve months, and in the county at least ninety days preceding the said election, and in the city of.....

..... at least thirty days and in precinct..... at least ten days before the election, and that I am a citizen of the United States and a qualified elector in said precinct."

Legislation. Sec. 2192-G. § 7 of Act of 1911, cited under § 2192-A.

2192-H. Schedule of interrogatories to electors.

SEC. 57h. It shall be the duty of each qualified elector to be lawfully registered, except as otherwise provided herein, to answer concerning the following matters: (1) Name in full. (2) Whether married or single. (3) Place of residence, which, if urban or suburban, shall be located according to its street number, or if there shall be no street number, then by the description of the lot or lots, in the block or blocks in the addition, division or subdivision into which the land upon which the residence is located, is divided; in all other cases the residence shall be located by the section or sections or subdivision thereof, in the township and range as established and numbered by the United States government survey.

(4) Whether owner of, tenant of, or lodger with occupant of residence. If the voter is a lodger in any rooming house or hotel the number of the floor and the number of the room shall be given and stated in the registration book.

(5) Whether a tax-payer in the city in which the election is to be held.

(6) Whether a native born or naturalized citizen of the United States. If a naturalized citizen, the applicant shall state how naturalized, whether by naturalization of self, parents, or otherwise; applicant shall state as near as may be to his best knowledge, information and belief, when self, parents, or, if a female, when husband were naturalized, the place and time of naturalization, and by what court the naturalization papers were granted.

(7) A description of his person, consisting of his height, sex, age, complexion, color of eyes and any other physical features by which he can be readily identified.

(8) His profession, business or employment. (9) His postoffice address. (10) The applicant shall comply with any educational qualifications required by law. It shall only be necessary for a female voter to state that she is twenty-one (21) years of age and over, in answer to all questions relating to her age.

Legislation. Sec. 2192-H. § 8 of Act of 1911, cited under § 2192-A. Framed on § 2200, which was § 9 of Act of 1905 p. 204.

2192-J. Close of polls—List of voters.

SEC. 57j. a. All persons in the polling place at the hour of closing the registration shall be allowed to complete their registration and the polls shall be kept open after such hour of closing only long enough to allow those actually present at the hour of closing to complete their registration.

SEC. 9b. The registration list so made shall contain the names of the qualified electors of the voting precinct in which the same is made, alphabetically arranged, according to the surnames, so as to show in one column the name of each elector at full length, and in another the place of his residence, designated by the number or name of the street and number of the house, if numbered, and if not, the section or other subdivision thereof, according to United States surveys, on which such elector shall reside, if he resides on surveyed land, and if not, such description as will best locate his residence.

Legislation. Sec. 2192-J. § 9 of Act of 1911, cited under § 2192-A.

2192-K. Returns to county clerk—Posting—Copies to chairmen.

SEC. 57k. Upon the completion of such lists of registered voters, the registration committee shall forthwith, and not later than two days after the last day of precinct registration, deliver the same to the county clerk. They shall also make four copies of the names and addresses of the registered voters, three of which they shall send to the county clerk with the registration book. The other, they shall, not later than two days after the last day of precinct registration, post in some conspicuous place as near as practical or convenient to the polling place to be used at the ensuing election, so as to be accessible and convenient to any elector who may desire to inspect the same. It shall be the duty of the county clerk, upon receipt of the list of names and addresses of the registered voters in the various precincts from the registrars, to forthwith, and within twenty-four hours, deliver one of said copies to each county chairman of the two political parties having cast the largest vote for governor at the last preceding election, taking his receipt therefor, and retain the third copy of the list of names and addresses for correction. The clerk shall correct the retained list of names and addresses received from the registration committee in accordance with the original registration book as it is on the ninth day preceding the election, and forthwith send the same to the member of the registration committee representing the political party that cast the second highest vote for governor at the next preceding election. It shall be the duty of such registrar to forthwith and at least five days preceding the ensuing election or primary election post the same in the place and stead of the list of names provided to be posted after the completion of precinct registration, which list shall remain posted until after the day of election.

At all primaries and elections the clerks of election shall also keep the usual poll and tally lists now kept or in use at general elections. The judges at elections and primaries shall certify in their returns the names and addresses of themselves and of the clerks officiating thereat.

Legislation. Sec. 2192-K. § 10 of Act of 1911, cited under § 2192-A. Framed on § 2204, which was § 13 of Act of 1905 p. 212.

2192-L. Change of residence.

SEC. 571. Any qualified elector who has been registered and who, subsequent thereto, shall have removed from the precinct in which he is registered to some other precinct may appear before the county clerk at any time within a period of not less than ten days prior to the day of any election, and upon making oath as to his present residence in said precinct, said county clerk shall draw a red line through the registration of said voter, making note as follows, in column for "remarks:" "Changed..... 19....., to precinct ward (or district)," and shall register in red ink such elector in the registration book for the precinct to which he is moved. Changes from one number in the precinct to another number in the same precinct may be made in the same manner, or may be made on election or primary day by the judges. The county clerk or deputy making such change shall sign his or her name in the column for the signature of the registration committee.

Legislation. Sec. 2192-L. § 11 of Act of 1911, cited under § 2192-A. A substantial copy of § 2203, which was § 12 of Act of 1905 p. 211.

2192-M. Purging the list—Corrections—Appeal to court.

SEC. 72m. a. Within thirty (30) days after any general city election (except a primary) the city officers having custody of the returns shall deliver to the county clerk one of the original poll books used at the preceding election, containing the names of all those who voted thereat, and said clerk shall use the same in purging the registration, as provided in this section.

b. Within forty-five days after any general election held after the passage of this act, the county clerk shall compare the poll list of voters who are shown thereby to have voted at the election, with the original registration for such elections, and strike from such original registration the names of all persons who failed to vote at such election, by drawing a red line through their names and writing thereafter in the column headed "remarks," the words,

"failed to vote." The registration lists, as thus purged, shall be the registration for the next succeeding primary election, with the names of such additional persons added thereto as shall, after the completion of said purging, have appeared personally before the county clerk for original registration or change of registration not more than thirty nor less than three days before any primary, and complied with the requirements of law respecting registration before the registration committee, and said clerk shall register any qualified elector who shall so appear in person for registration.

Any county chairman or his representatives or any qualified elector in such precinct may also appear at the time of precinct registration and protest against the registration of any name already appearing upon said registration list registered during that precinct registration, which is claimed to be illegal or fraudulent, and a majority of such committee, if satisfied any such name is illegal or fraudulent, may strike the same from the list, subject to the right of any person whose name is so stricken, or any county chairman, to apply in a brief petition to the district or county court to have his name or such name restored to such list if legally entitled to remain there. No fee shall be charged or collected in any case where such name may be restored to the registration list. Such protests, and two copies thereof, must be filed in writing with such registration committee upon said day, and it shall be the duty of the committee to return the said protest and copies thereof to the county clerk at the time of making return of such registration book as provided herein, with a statement by all or any one of said committee as to any knowledge or information obtained; their opinions as to the truth or falsity of such protest, and their action in respect thereto, which statement shall remain on file with the county clerk. Forthwith, upon such filing with the county clerk, it shall be his duty to deliver or mail a copy of such protest so filed with him, to each of the two county chairmen. Such statement filed by the registration committee, or any member thereof, shall be conveniently kept with the registration book or records from such precinct and subject to public inspection.

Legislation. Sec. 2192-M. § 12 of Act of 1911, cited under § 2192-A.

2192-N. Petition for judicial correction of registry—Form of process—Procedure—Misdemeanor.

SEC. 57n. a. At any time not more than twenty-five nor less than eighteen days before any election or primary election, any qualified elector may file in the county or district court a petition, which shall be under oath, alleging that the petitioner has made careful investigation, and believes that names registered by the registration committee are illegally or fraudulently registered in certain precincts, which shall be stated. The petition shall set forth consecutively and in alphabetical order each of such names, with the address given in the registration book in each precinct, and the names of the registration committee in such precinct. Such petition shall state briefly the facts upon which such charge of illegality or fraud is made. The verification may be made upon information and belief. As soon as possible, and within twenty-four hours after the filing of such petition, the clerk of the court shall mail to each member of the registration committee in such precinct a subpoena in the form following, and shall mail to each name and address alleged therein to be illegal or fraudulent, a notice of the filing of such petition, and the time of hearing the same, which shall be not less than three nor more than five days thereafter. The subpoena to the members of the registration committee shall be substantially as follows:

"You are notified that on the..... day of....., filed in the..... court a petition asking for the purging of certain names from the registration list in precinct....., ward....., and that it appears from the records that such registration was made by you, and that you have represented it to be legal and correct. The petition charges that the list of names attached hereto in said precinct registered by you are illegal or fraudulent.

You are notified to appear and answer the charges of said petition at the hour of..... o'clock on the..... day of

....., 19...., at the..... court
court house, in the city of.....

You are further notified that failure to appear, without sufficient excuse, renders you liable for contempt of court and punishment accordingly, as provided by the registration law.

.....
Clerk

(Attach list of names and addresses in alphabetical order)

The subpoena shall be issued on the court's motion and the county shall pay the witness and mileage fees.

The notice mailed to the name and address of each person in such precinct mentioned in such petition as being illegally or fraudulently registered shall be substantially as follows:

"You are notified that..... (state the official position of such petitioner, if the petitioner should be a county chairman, member of a registration committee, or otherwise), has filed a petition in this court, asking for the purging of the registration in precinct....., ward.....

It is charged in such petition that your name appearing upon the registration lists of such precinct was illegally or fraudulently registered.

You are notified that said cause will be heard at the..... court, at the court house in the city of....., at the hour of..... o'clock, on the..... day of.....,

19.... You are notified that your name will be stricken from such registration list if it shall be proved by the evidence at such hearing that you are not entitled to registration.

.....
Clerk."

b. It shall be the duty of any person filing a petition as

herein provided, for the purging of registration, to file therewith two duplicate copies of the same, and it shall be the duty of the clerk of the court to immediately deliver or mail to each of the two county chairmen one such duplicate copy, together with the notice stating that the original of such copy has been duly filed in his office, stating the time of such filing and the time and place when the cause is set for hearing.

c. Any person whose name is charged to be illegally or fraudulently registered, who shall appear in person and make oath that he or she is a legally qualified elector to vote in such precinct, or any person not present, whom any one member of such registration committee shall make oath in court is a legally qualified elector in said precinct, shall, for the purpose of such hearing, be conclusively entitled to have his name remain upon such registration list. Any person making such oath in open court shall be subject to cross examination by the petitioner or any person representing the petitioner at such hearing. If any person at such hearing shall testify that any one thus retained upon such registration list by such oath or affirmation is not a qualified elector in such precinct, a record of the fact shall be made and transmitted by the clerk of the court to the district attorney.

d. In all cases, except those which shall be conclusively entitled to remain upon the registration lists by reason of the oath or affirmation provided in the last paragraph of this section, the court shall investigate summarily and within forty-eight hours after the close of the evidence determine whether or not such charges are sustained; *Provided*, Only competent legal evidence shall be received on such hearing or considered by the court, and no name registered in accordance with law shall be struck from the registration unless it shall be so proved that the challenged person is not a qualified voter in the precinct wherein he is registered. No presumption shall be indulged in against any person whose registration is challenged merely because of the failure of such person to attend the hearing. At the close of such hearing the court shall announce the names in such petition as to which such charges have been sustained, and shall direct the clerk of the court to forthwith certify to the county clerk the lists of names of such

persons, with their addresses in each precinct and ward, arranged alphabetically and according to precincts. It shall thereupon be the duty of the county clerk, upon the receipt of said list from the said court, to forthwith strike such names from the registration lists in the proper precinct by ruling a red line through such name, with the notation in the column for "remarks," that such name or names were stricken out in pursuance of the order of such court, giving the date of such order.

e. Any person who shall without previous investigation, or without reasonable cause or excuse, wilfully charge in any petition filed in such court that the name of any person upon such registration book or lists is illegal or fraudulent, or who shall not file such petition in good faith, or who shall file the same for the purpose of hindering or delaying any registration or any election, and not for the purpose of purging such registration lists of illegal or fraudulent names, shall be deemed guilty of a misdemeanor, and also of contempt of court.

Any member of the registration committee, or any person whose name is charged to be illegally or fraudulently registered, shall have the right to charge by written affidavit filed in such cause, which affidavit may be upon information and belief, that the person filing such petition is not acting in good faith, but has been guilty of any of the acts or improper motives mentioned herein, and if, upon hearing, which shall be at the same time the case is heard on the petition, any of such charges are, in the opinion of the court, sustained, such persons shall be guilty of a misdemeanor and of contempt of court.

f. All hearings of any such petition shall be summary, final and not the subject of delay.

g. No other pleadings than the said petition and affidavit shall be permitted to be filed in any such cause.

h. The court shall have the power to subpoena any person or persons as witnesses at such hearing and make any necessary investigation to ascertain the truth of any of the charges in such petition or affidavits, provided the method of such investigation shall

not cause unnecessary delay or interfere with the final disposition of such cause within the time provided for herein.

Persons subpoenaed shall be paid by the county the usual witness and mileage fees allowed witnesses for the people in criminal cases in courts of record. The decision of the court in any such case shall be final, and no appeal shall lie to any other court, except that the supreme court may, in the exercise of its discretion, review any such proceedings in a summary way. The penalty for tampering with or destroying such list shall be printed in a conspicuous place on the outside thereof, and the registration committee shall adopt reasonable methods for the posting of such list so as to protect it from the weather or theft, and make it accessible to the public at reasonable times, and they shall sign their names and addresses on the cover of such list.

Legislation. Sec. 2192N. § 13 of Act of 1911, cited under § 2192-A. Framed on § 2202, which was § 11 of Act of 1905 p. 207.

2192-O. Sworn return of registration committee.

SEC. 570. a. When any registration book or copy thereof is delivered to the county clerk under any provision of this act, there shall be attached thereto a certificate, signed and sworn to by the members of the registration committee making the registration contained in such book, certifying substantially as follows:

“We, the legally appointed committee for the registration of the electors for ward (or district), precinct., do solemnly swear (or affirm) in the presence of the ever-living God that we have diligently performed the duties required of us by law in completing the registration of voters for said precinct, and have herein entered the names of electors in accordance with the provisions of the statutes of the state relating to the registration of voters, and that as such registration committee for the purpose mentioned, we did sit at number., (district, ward or other description of the place of registration) in the said precinct between the hours of seven o'clock a. m. and nine o'clock

Secs. 2192-O.-2192-P. COLORADO STATUTES ANNOTATED

p. m. on thedays of
purpose of registering electors in said precinct, and we
respects complied with the law in making the *registrati*
precinct up to and including the day of this *certificat*
have not knowingly permitted any illegal or *fraudulent re*
in said precinct.

.....
.....
Committee of registration for ward (or district).....,]
.....

Subscribed and sworn to before me this.....
day of....., A. D. 19.....”

b. Any member of the registration committee may
daily copies upon duplicate sheets or duplicate registration *sl*
of registrations made by such committee. It shall be the
of the members of such committee to sign and certify to any
of their registration list when requested by any member of
committee.

Legislation. Sec. 2192-O. § 14 of Act of 1911, cited under § 2192-A.
Framed on § 2196, which was § 5 of Act of 1907 p. 379, amending
of Act of 1905 p. 196.

2192-P. Blank books.

SEC. 57p. The board of county commissioners in each count
from time to time as may be required by this act, shall provide
for all election precincts all necessary supplies and registration
books which shall be of sufficient strength and durability for the
registrations provided for; such books shall be of convenient size
and shape, conforming in the printing and blank spaces to the
requirements of this act, and shall be arranged for the registration
of names in divisions to be composed of ruled columns with appro-
priate headings, under which the information obtained or required
by the registration committee concerning the proper answers and

statements made by each elector in being registered in compliance with the act, shall be recorded. The names of the electors as registered shall be numbered under each division, consecutively from one upwards and the date of registration shall also be recorded. There shall also be ruled columns under each one of said divisions for the signature of electors for informants as to their qualifications and the name or names of the registration committee; also a column with the heading, "Registration Changed From" and sub-headings, "Election Precinct No.," and "Register No.," whereunder in all cases of changed registration or change of residence of any elector shall be stated the election precinct and registry number of elector's last registration. There shall also be a ruled column "Remarks," under which shall be briefly noted any important information affecting the registry of the elector.

Legislation. Sec. 2192-P. § 15 of Act of 1911, cited under § 2192-A. Framed on § 2198, which was § 7 of Act of 1905 p. 198.

2192-Q. Headings and form of registration books.

SEC. 57q. The headings of the registration books shall be substantially as follows, viz.:

[illegible]

POSTOFFICE ADDRESS	(Director Stamp) NAME IN FULL	INFORMANT ADDRESS		RE/ESTIMATION COMMITTEE	RE/ESTIMATION CHANGED FROM			REMARKS
		Signature of			Initial and Date	Present	Past's Date	
		Name Address						

Legislation. Sec. 2192-Q. § 16 of Act of 1911, cited under § 2192-A. Similar forms were given in § 2199, which was § 8 of Act of 1905 p. 199. The words "two thousand" in diagram A should doubtless read "five thousand." The Act contains no § 17.

2192-R. Copies of registration book and election laws to county clerk.

SEC. 57r. It shall be the duty of the secretary of state to make out a complete form of registration book, with the oath of the registrar to any blank and the requisite blank column properly headed, and to have the same printed and send copies thereof to the clerk of each county, together with a sufficient number of copies of the registration and election laws bound in pamphlet form.

Legislation. Sec. 2192-R. § 18 of Act of 1911, cited under § 2192-A.

2192-S. Election supplies.

SEC. 57s. It shall be the duty of the county commissioners to supply and the county clerk of each county to see that there is delivered whenever required for any primary or election for the use of the board of registry and judges of election in each precinct, all necessary supplies as may be required under the provisions of this act for the registration of voters, and he shall send them by mail or other safe conveyance to the member or members of the registration committee authorized to receive the same so as to be in their possession at least five days prior to the day of the first meeting of the registration committee for making any registrations required by this act.

Legislation. Sec. 2192-S. § 19 of Act of 1911, cited under § 2192-A.

2192-T. County clerk make rules.

SEC. 57t. The county clerk shall have the right to make reasonable rules for calling for the registration books and the delivery thereof and preserving the same from loss, mutilation and alteration and may issue written instructions to the various registrars as to the method of entering in their books the names of electors in accordance with the provisions of this act.

Legislation. Sec. 2192-T. § 20 of Act of 1911, cited under § 2192-A.

2192-U. Registration committee call for books.

SEC. 57u. It shall be the duty of a majority of the registra-

tion committee to call in person at the office of the county clerk and recorder at least one day prior to any primary election, for the purpose of receiving the original books of registration. The original book of registration shall be used by such judges at their respective polling places in complying with the provisions of this act, and no copy thereof shall be used for such purpose unless the original has been lost, destroyed or stolen. On the day preceding any primary or election the clerk shall deliver the original registration book to the judge representing the political party entitled to the minority judge in such precinct. Said registration book shall be furnished to said judge in a sealed envelope, which said envelope shall not be opened until the morning of primary or election at the precinct in the presence of the judges. The custody of the registration book shall be with the judge of election in each precinct to whom it was delivered by the county clerk.

Legislation. Sec. 2192-U. § 21 of Act of 1911, cited under § 2192-U.

2192-V. Election precincts.

SEC. 57v. a. The boundaries of election precincts in cities for city elections shall be co-extensive with those in such cities for county elections; and they shall not be changed nor shall any new election precinct or precincts be created, within the limits of any city, or city and county with a population exceeding two thousand within less than three months prior to any city, county or state election; and whenever such boundaries shall be changed, or a new election precinct or precincts be created, as provided by law, within ten days after the creation of such new precinct or changes of such boundaries, it shall be the duty of the person charged with such duties under this act to forthwith proceed in accordance with the directions and provisions of this act, to appoint a registration committee for such new or changed precincts. The officers charged by law with such duty, shall whenever necessary, as herein provided, create election precincts or alter or divide any existing election precincts in any city, county, or city and county, in such manner that each election precinct shall as near as possible contain not more than five hundred (500) registered votes.

b. In case any new election precinct shall be formed, or in case of the division of any voting precinct, the names of all voters

residing in that part of any precinct detached shall be forthwith stricken by the county clerk from the registration list of such precinct, and shall be by him inserted in the registration list of the new precinct or the precinct of which such part may have been attached, at least ten days prior to the ensuing primary or to the fourth Thursday preceding the day of election, as the case may be.

Legislation. Sec. 2192-V. § 22 of Act of 1911, cited under § 2192-A.
A revision in part of § 2206, which was § 15 of Act of 1905 p. 214.

2192-W. City elections—Duties of city clerk—Notices.

SEC. 57w. a. In city elections all matters relating thereto and required to be done hereunder shall be performed by the city officers as now provided by law, and the city clerk shall perform all of the duties required of the county clerk except the appointment of the registration committee and judges of election, and the custody, preparation, delivery and purging of the registration books, and corrected list of names and addresses, and registration of electors, which shall be done by the county clerk. The board of county commissioners of any county wherein is situated any city other than the county seat having a population of five thousand or more inhabitants shall, at least three times before any primary, provide a suitable place in such city for the registration of electors therein for the primary and ensuing election. The county clerk shall, by advertisement in a daily newspaper of general circulation in such city, give notice daily for ten days prior to the beginning of registration to the effect that registration will be had in such city, giving the times and place, and such other information as is requisite to inform the electors of such registration. He shall likewise cause printed notices to be posted on the outside of the place where such registration is to be conducted at least ten days prior to the beginning thereof, giving a like notice to the electors of such city. It shall be the duty of the county clerk to appoint a deputy or deputies to register the electors of such city as electors are registered before the county clerk. Said deputy or deputies shall on the first and third day preceding any election or primary sit at the place designated between the hours of 7 A. M. and 9 P. M. for the purpose of such registration. They shall take with them the original books of registration for the precincts included within such

city and sit at the place provided by the county clerk for such registration during the times registration is provided at the county seat before the county clerk and proceed to the voters of the various precincts of such cities, who shall appear before them in person and comply with the provisions of the act respecting registration before the county clerk. Changes of registration may be made before such deputy clerks in the same manner as is provided for before the county clerk. The original registration shall, at such times as they are not required for registration or change of registration in such city, be returned kept in the office of the county clerk.

b. In all cities, cities and counties operating under Article XX of the Constitution when the charter thereof prescribes that city officers shall perform the acts and duties required to be done, performed by this act, such charter provisions shall prevail, and otherwise this act shall govern.

c. All acts and things required to be done by the county chairman shall, in city elections, if there be a city chairman of political parties participating in such elections, be performed by such city chairman, except the filing of the original lists with the county clerk for the selection of the registration committee. The members of the city committee of such parties participating in such elections shall perform the acts and duties required of the county committee, if there be a city committee as distinct from the county committee representing such organizations in any such city elections. In all respects this act shall be followed and its purpose and intentions observed in city elections.

All expenses incurred by the county in the matter of city elections shall be paid by the city to the county.

Legislation. Sec. 2192-W. § 23 of Act of 1911, cited under § 2192-A. A revision in part of § 2211, which was § 20 of Act of 1906 p. 217.

CITATIONS.

The expression, "general election" used in sec. 22 of the charter of Denver, refers to the next general city and county election, and not to the biennial for state and county officers.—*Vickery v. Wilson*, 40 C. 490, 90 P. 1034.

The act of 1907 cited in holding that under sec. 174 of the Denver charter, each member of the election commission has the absolute right to appoint one election judge.—*Peo. v. Youngs*, 43 C. 339, 95 P. 1069.

2192-X. Special elections—Bonds—Franchises.

SEC. 57x. In any special election for the submission of public questions or the issue of bonds or the granting or refusal of or concerning public franchises only, the registration shall be made as provided in this act for general elections, and the time for such registration and performance of other acts shall be a like time before such election, and in every other respect such election shall be in conformity with this act, as far as practicable. Any special elections shall be called in sufficient time before the date thereof, as to permit such registrars to comply with the provisions of this act.

b. No person in the employ of or owning any stock, bonds or securities of any public utility corporation seeking a public franchise at any election shall be permitted to act as a registrar, judge, clerk or election official at any such election.

Legislation. Sec. 2192-X. § 24 of Act of 1911, cited under § 2192-A.

2192-Y. Registration for next election.

SEC. 57y. Immediately after the passage of this act persons having the custody of the poll and registration books used at the preceding election shall deliver the same to the county clerk, who shall thereupon proceed to make up a registration list by precincts. Said list shall be made up by registering in books provided for that purpose all persons who are shown by the poll lists to have voted at the preceding election. If in any precinct the registration and poll lists are not available, the clerk shall, beginning with the 15th day after the passage of this act, and continuing down to within three days of the next ensuing primary, or as the case may be, within ten days of the time when the registration books are to be delivered to the registration committee for the completion of registration, as provided in section 7 hereof, register at his office at any time during regular office hours the names of all qualified electors who shall appear in person and comply with the provisions of this act with respect to registrations before the registration committee. Also the names of all qualified electors who shall be properly vouched for in accordance with the provisions of section 8. Beginning with the 11th day after the passage of

this act, the county clerk shall give ten (10) days' public notice by advertising in a daily newspaper of general circulation of each city of the precincts of which he has not received the registration and poll books, that he will register voters of such precincts at his office in order to make up the first registration under this act, stating the time during which registration shall continue, and that he will also during said time register any electors of other precincts who did not vote at the preceding election. The clerk shall, in accordance with section 7, deliver duly verified copies of said registration books to the registration committee, who shall proceed to complete the registration as provided in section 8. Such registration shall be finally completed and corrected ten (10) days prior to the ensuing election, as provided herein, and the registration used at the first election held hereunder.

Legislation. Sec. 2192-Y. § 25 of Act of 1911, cited under § 2192-A.

2192-Z. Temporary registration committee.

SEC. 57z. In all cities and in any city and county in which any election held more than sixty (60) days after the passage of this act, whether general or special, may be held for county or city offices, or for the issuing of bonds, or for the granting of public franchises, or the voting upon any public question, or other matter, within the provisions of this act prior to the appointment of the permanent registration committees provided for herein, there shall be temporary registration committees appointed to carry out the provisions of this act. Such temporary registration committee shall be appointed as far as practicable in the same manner as the registration committees provided for by this act, having all the rights, duties and powers of such registration committees, and making the registration of voters under the provisions of this act, for any such election, in the manner provided by this act; *Provided*, The time of appointment of such committee shall be forty-five days before any such election; *Provided, also*, That in submitting names for members of the registration committee by the county chairman to the county clerk, as provided herein, he shall not be required to obtain the same from the precinct committeeman, and the time of performance of all acts and duties of such temporary registration committee shall be a like time before such

election as herein provided to be performed by the registration committee before any other election.

Legislation. Sec. 2192-Z. § 26 of Act of 1911, cited under § 2192-A.
An enlargement of the terms of § 2212, which was § 21 of Act of 1905 p. 217.

2192-AA. Fees of county clerk and registration committee clerk.

SEC. 57aa. a. The county clerk of each county shall be authorized to receive from the county the sum of five cents for each registration by him made, for each change of registration made on the application of any qualified elector in pursuance of the provisions of this act, for each name by him stricken from the registration, for each notice issued and mailed under the provisions of this act, and for each name copied by him on the registration books furnished to the registration committee.

b. Each member of the registration committee provided for in this act shall receive a compensation for his services, to be paid in the manner and in accordance with the laws providing for the payment of election judges or similar election officials, the sum of five dollars (\$5.00) per day for not to exceed two days actually served for registration, and the sum of five dollars (\$5.00) for acting as judge of any election. Clerks of election shall receive the same compensation as provided herein for judges of election.

c. The registration committee is hereby authorized to employ a clerk or clerical assistants if necessary, to make copies of the names and addresses herein provided for, at not to exceed the sum of ten dollars (\$10.00) for each precinct for such copies of the names and addresses of registered voters, as are provided for by this act, or the registration committee may make such copies and receive such compensation. Such committee, or any two members thereof, are authorized to sign a certificate certifying that any person named by them in the certificate has performed such clerical services, stating the amount of compensation to be allowed said clerk to be paid as election judge or other election officials are paid.

d. The compensation for any election officer, not herein provided for, shall be as now provided by the laws of this state.

Secs. 2192-AA.-2192-BB. COLORADO STATUTES ANNOTATED. Chap. 43

Legislation. Sec. 2192-AA. § 27 of Act of 1911, cited under § 2192-A. Framed on § 2207, which was § 1 of Act of 1907 p. 383, amending § 16 of Act of 1906 p. 383.

2192-BB. Custody of books and papers.

SEC. 57bb. The oaths or affirmations provided for by this act shall be preserved by the county clerk with the books and papers of each precinct respectively, until a new registration committee is appointed, as provided by this act. The old registration books, records, affidavits or other papers shall not be destroyed until after the next general election. Such registration committee, clerks and electors, by their signatures, in the place provided in this act, in said registration books, shall be conclusively deemed in law to have duly verified the registration or change thereof of any elector, respecting whom such registration or change was made, in substance, manner and form as aforesaid, and shall for false attestation, swearing or certifying, be subject to the penalties prescribed in this act. Said registration books, certificates, oaths, state or certified copies of the same by the county clerk, or the certified copy of entries therein by such clerk, shall be admissible in evidence as proof of the taking of said oath or affirmation in all criminal proceedings for the punishment of false attestations, swearing, wrongful registration, certifying, signing or issuing of any paper or statement provided by this act. Upon request of any registered elector, it shall be the duty of the county clerk to make out and deliver to such elector a certificate of the registration of such elector, setting forth the fact of such registration, including the date, description and other information recorded in connection with the registration of such elector, which certificate shall be attested by the hand of the county clerk and the seal of the county. The county clerk shall be allowed a fee of five cents for each of such certificates, to be paid by the applicant. Registration books shall be left in the custody of the county clerk, who shall be responsible therefor, except when in actual use by the registration committee or judges of election in the performance of their duties. The masculine pronoun used in this act shall also include the feminine.

Legislation. Sec. 2192-BB. § 28 of Act of 1911, cited under § 2192-A. A substantial copy of § 2205, which was § 14 of Act of 1905 p. 213.

2192-CC. One clerk to each of two parties.

SEC. 57cc. Each of the two political parties casting the largest vote for governor at the last preceding election, shall be entitled to a clerk in each precinct at each primary and election, who shall be appointed by the judge of the party entitled thereto.

Legislation. Sec. 2192-CC. § 29 of Act of 1911, cited under § 2192-A. Framed on § 2208, which was § 17 of Act of 1905 p. 216.

2192-DD. Watchers and challengers.

SEC. 57dd. a. The chairman of each political party may name a watcher at the registration in any precinct. Watchers or challengers shall be electors of the precincts in which they act. Each challenger or watcher shall have the right at any time to appoint an alternate to take his place, with all the rights and duties of such watcher or challenger, to act during such time as such watcher or challenger may be absent, and not to exceed two persons designated by any watcher or challenger may remain in or about the polling place during the counting of the vote and certifying the returns; and it shall be the duty of the judges of such precinct to protect such watchers and challengers or their alternates or representatives in all the rights guaranteed them by the statutes of this state.

b. In all primaries, the party committeeman of each party, of any precinct, may represent his party at the polling place during the casting and canvass of the vote at a primary, or he may appoint an agent, or the chairman of each party may designate a member of his committee or other person for such purpose. Any candidate for a nomination on the ticket of any political party nominating candidates at the primary shall be entitled to act as challenger or watcher during such primary and the canvass of the vote thereof.

Legislation. Sec. 2192-DD. § 30 of Act of 1911, cited under § 2192-A. Framed on § 2213, which was § 22 of Act of 1905 p. 218.

2192-EE. Judicial petition to settle controversies.

SEC. 57ee. Whenever any controversy shall arise between any official charged with any duty or function under this act, and any candidate, or the officers or representatives of any political party

or persons who have made nominations, upon the filing of a petition in the district or county court by any such official or persons, setting forth in concise form the nature of such controversy and the relief sought, which petition shall be under oath, it shall be the duty of such court, or the judge thereof in vacation, to issue an order commanding the respondent in such petition to be and appear before the court or judge, and answer under oath to such petition; and it shall be the duty of the court or judge to summarily hear and dispose of any such issues with a view of obtaining a substantial compliance with the provisions of this act, by the parties to such controversy, and to make and enter orders and judgments, and issue the writ of process of such court to enforce all such orders and judgments. The provisions of this act shall be liberally construed, so as to carry out the intent of this act, and of political parties, nominees, and others in proceedings under this act. Such proceedings may be reviewed and finally adjudicated by the supreme court of the state, if application to such court is made within three days after the termination thereof by the court in which the petition was filed, if the supreme court shall be willing to assume jurisdiction of the case.

Legislation. Sec. 2192-EE. § 31 of Act of 1911, cited under § 2192-A.

2192-FF. Penal sections apply to all elections.

SEC. 57ff. References to elections of any character in the penal sections herein shall be deemed to include all elections of any character whatsoever.

Legislation. Sec. 2192-FF. § 32 of Act of 1911, cited under § 2192-A.

2192-GG. Violation of act—Punishment.

SEC. 57gg. Any person who shall violate any of the provisions of this act or in any manner interfere with or impede the due and proper carrying out of the same, whether by act of commission or by failure to perform any act or duty imposed or required for the proper administration of this act, or who shall knowingly permit or encourage another so to do, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one thou-

sand dollars (\$1,000.00), or shall be imprisoned in the county jail not less than one month nor more than one year, or any such person may be punished by both such fine and imprisonment.

Legislation. Sec. 2192-GG. § 33 of Act of 1911, cited under § 2192-A. Secs. 2209, 2210 were the principal penal sections of the Act of 1905 p. 216.

CITATIONS.

The act of 1905 cited in dissenting from an opinion holding that a prosecution for a violation of the provisions of the act of 1894 brought before the passage of the act of 1905, could not be amended after the enactment of the latter act.—*Wilson v. Peo.*, 36 C. 427, 85 P. 187.

2192-HH. Duty of district attorney.

SEC. 57hh. Upon the making and filing of an affidavit with the district attorney to the effect that any member of the registration committee, or any other person or persons, have violated any of the provisions of this act, in which affidavit the nature of such violation and the facts with reference thereto shall be stated, it shall be the duty of the district attorney to forthwith investigate, and if reasonable grounds appear therefor, prosecute the same.

Legislation. Sec. 2192-HH. § 34 of Act of 1911, cited under § 2192-A. Framed on § 2214, which was § 23 of Act of 1905 p. 218.

2192-JJ. Perjury.

SEC. 57jj. Any person who shall falsely and corruptly make any oath provided for by this act shall be deemed guilty of perjury and punished accordingly.

Legislation. Sec. 2192-JJ. § 35 of Act of 1911, cited under § 2192-A.

2192-KK. Irregularities no defense—Judicial notice.

SEC. 57kk. Irregularities or defects in the mode of calling, giving notice of, convening, holding or conducting any primary or election authorized by law shall constitute no defense to a prosecution for a violation of this act. When an offense shall be committed in relation to any primary or other election, an indictment, information or complaint for such offense shall be sufficient, if it

allege that such primary or election was authorized by law, without stating the call or notice of primary or election aforesaid, the names of the judges or clerks holding such primary or election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any primary or election.

Legislation. Sec. 2192-KK. § 36 of Act of 1911, cited under § 2192-A.

2192-LL. Power of attorney general.

SEC. 57ll. The attorney general of the state shall have equal power with district attorneys to file and prosecute informations or complaints against any person for violating any provision of this act or any election law of this state.

Legislation. Sec. 2192-LL. § 37 of Act of 1911 cited under § 2192-A.

2192-MM. School fund.

SEC. 57mm. All funds collected under the provisions of this act shall be paid to the county treasurer of the county wherein the offense was committed for the benefit of the school fund of such county.

Legislation. Sec. 2192-MM. § 38 of Act of 1911, cited under § 2192-A.

2192-NN. Classification of cities.

SEC. 57nn. Sections 1 to 38 hereof, both inclusive, shall apply only to election precincts included within the limits of cities with a greater population than five thousand inhabitants. In all other election precincts in this state the registration of electors for general or primary elections shall be made as now provided by law for general elections, and the penalties now provided for violations thereof shall apply to the registration of electors for primary elections. The registration board in the last mentioned class of election precincts shall, in addition to the days now provided, sit for the purpose of registering electors on Saturday and Monday preceding primary elections between the hours of 7 a. m. and 7 p. m. of such days, which registration shall apply for both the primary and general election. The pay of such registrars and clerks for service at primary registrations and elections shall be

the same as now provided by law for general registrations and elections.

Legislation. Sec. 2192-NN. § 39 of Act of 1911, cited under § 2192-A.

2192-OO. Liberal construction of act.

SEC. 5700. This act shall be liberally construed, so that all legally qualified electors may be registered, and that those who are not legal electors may be kept from such registration lists, and that fraud and corruption in elections may be prevented, and these purposes shall not be defeated by any informality or failure to comply with the provisions of this act as to any notice required by this act.

Legislation. Sec. 2192-OO. § 40 of Act of 1911, cited under § 2192-A. This perfunctory and harmless directory section was paragraph 6 of § 2193.

2192-2216. (Repealed.)

See notes to §§ 2192-A-2192-OO.

REGISTRATION FOR SPECIAL ELECTIONS.

Section.

- 2216-A. Registration of electors.
- 2216-B. When new registration not required.
- 2216-C. Registration committee sits when.
- 2216-D. Removal from precinct to precinct—Procedure in such cases.
- 2216-E. List certified by registration committee.
- 2216-F. Duties and compensation of county clerk.
- 2216-G. Petition for purging list—Procedure.
- 2216-H. Exemptions.

2216-A. Registration of electors.

SEC. 81a. In all cities having a greater population than two thousand inhabitants no person shall hereafter be permitted to vote at any special election held at a time other than a general election, or at any general city election held between the time of the adoption of a proposal to hold a charter convention under section five of article XX of the constitution and the time of the adoption of the charter prepared and submitted by such charter convention, or at the first election of officers under such charter, unless such person shall first have been registered as herein provided.

Secs. 2216-A.-2216-C. COLORADO STATUTES ANNOTATED. Chap. 43

Legislation. Sec. 2216A. Sec. 1 of Act 1909 p. 484, entitled:

AN ACT

Concerning Certain Elections in Cities Having a Greater Population than Two Thousand Inhabitants and Providing for the Registration of the Qualified Electors Therefor.

This Act seems to refer chiefly to registrations for elections on the proposition for a new charter and to the first election after the charter adopted as provided by Art. XX § 5 of the constitution.

2216-B. When new registration not required.

SEC. 81b. For all such elections no new registration shall be required, except as hereinafter provided, but any qualified elector of any such city whose name is on the registration books used at the then last preceding general election, whether county or municipal, and who still resides at the place designated in his said registration, shall be deemed properly registered for any such election, and additional registration and changes in registration may be made as hereinafter provided.

Legislation. Sec. 2216B. Act 1909 § 2, cited under § 2216A.

2216-C. Registration committee sits when.

SEC. 81c. On the fourteenth day preceding any such election to be held the county clerk of the proper county shall deliver to the registration committee of each election precinct the original book of registration for that precinct as prepared and completed for the then next preceding general election, whether county or municipal, and on the tenth day preceding the election thus to be held, or if that day be a legal holiday or Sunday, then on the succeeding day, the registration committee for each precinct shall sit from nine o'clock a. m., until nine o'clock p. m., at some suitable place to be provided by the county commissioners and centrally located within the precinct as far as practicable, and shall place on the said book of registration, next after the names already thereon, the names of all qualified electors of that precinct who are not registered and who shall present themselves for registration and comply with the requirements prescribed by the general registration laws of this state.

Legislation. Sec. 2216C. Act 1909 § 3, cited under § 2216A.

2216-D. Removal from precinct to precinct—Procedure in such cases.

SEC. 81d. Any qualified elector whose name appears upon any such book of registration in any such city, but who has removed from the precinct in which he is registered to some other precinct, may appear before the county clerk at any time within five days prior to any such election and, upon making oath in writing as to his then present residence, said county clerk shall draw a red line through the registration of such person, making a note as follows: Changed....., 19....., to precinct.....ward....., inserting the date and number of precinct and ward therein, and shall register in red ink such person in the book of registration for the precinct in which such person then resides; and a change of residence within the same precinct may be made in like manner. The county clerk or deputy making such change shall sign his name in the column provided for the signatures of the registration committee, and the person so registered shall also sign his name as in the case of an original registration.

Legislation. Sec. 2216D. Act 1909 § 4, cited under § 2216A.

2216-E. List certified by registration committee.

SEC. 81e. On the day following the registration day aforesaid the registration committee in each precinct shall make a copy of the entire registration list of that precinct, containing only the name and address of each person appearing thereon, and shall certify the same as being correct and shall post such copy on the outside of said registration place, where it shall remain until after election.

Legislation. Sec. 2216E. Act 1909 § 5, cited under § 2216A.

2216-F. Duties and compensation of county clerk.

SEC. 81f. Immediately upon completing such copy said registration committee shall deliver the original book of registration to the county clerk who shall retain the same until the day prior to the election when he shall deliver the same to the judges of election of the proper precinct for their use at such election, properly

certified as required by the registration laws of this state to be done in cases of copies, but the county clerk shall not, for any such election, make and furnish any copy of such registration lists to the judges of election nor shall he make any charge for delivering said original book of registration as required herein; but his compensation for all other matters hereby required shall be as fixed by the registration laws of this state.

Legislation. Sec. 2216F. Act 1909 § 6, cited under § 2216A.

2216-G. Petition for purging list—Procedure.

SEC. 81g. At any time prior to the delivery of the original book of registration to the registration committee of the precinct, as herein provided, a petition for purging the list may be filed as to the registration list appearing therein, at any time prior to the seventh day before election a petition may be filed for purging the list of additional registrations made as herein provided, which petitions and the procedure and relief thereunder shall be the same, as near as may be, as provided in the registration laws of this state. And the registration and election laws of this state shall govern in all matters connected with the making of said registration and the holding of any such election, except as herein otherwise provided.

Legislation. Sec. 2216G. Act 1909 § 7, cited under § 2216A.

2216-H. Exemptions.

SEC. 81h. The provisions of this act shall not be held to apply to any city operating under special charter under any constitutional provisions of the state.

Legislation. Sec. 2216H. Act 1909 § 8, cited under § 2216A.

F. JUDGES AND CLERKS.

Section.

- 2217. Appointment of judges and clerks.
- 2218. Appointment of judges and clerks.
- 2219. Clerks of election—How chosen.
- 2220. Judges—Term of office—Oath.
- 2221. Oath of judges, how taken.
- 2222. Oath of judges and clerks—Form.

F. JUDGES AND CLERKS.

Continued.

Section.

- 2223. Judges may administer oaths to each other and clerks.
 - 2224. Vacancy in board, how filled.
 - 2225. Voters elect judge, when—Powers of.
 - 2226. Fees of election officers.
 - 2227. Fees of judges and clerks of election.
 - 2228. Fees of board of registry.
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2217. Appointment of judges and clerks of election.

SEC. 82. Judges and clerks of election shall be appointed for each election precinct in the manner following: In all counties of class "A" and of the first and second classes according to the classification of counties, made for the purpose of fees, during the first week of the session of the board of county commissioners for each such county in the state, which commences on the first Monday of October in each year, and in all other counties, according to such classification, during the first week of the session of the board for each such county which commences on the first Monday of July of each year, they shall appoint three qualified electors, two of whom shall be of opposite political parties, to act as judges of election in each election precinct, at all general and special elections, until their successors are appointed. On or before the last days of September and June respectively in each year, such political parties may each file with the clerk of the board of county commissioners a list, designating six or more persons in each election precinct in such county, together with their residence and occupations, which list shall be subscribed by the chairman or secretary of the county organization of such political party, and an affidavit shall be added thereto, subscribed by the said chairman or secretary stating that he is such officer, or acting officer, duly appointed, and with authority to file such list on behalf of such party; that the names submitted are names of qualified electors of such precincts, respectively; that, according to the best knowledge and belief of such affiant, each of such persons named in such list is a creditable and trustworthy person; and the county commissioners shall appoint one of such persons

in each precinct so recommended in each of said lists, as election judge. Whenever all or any of the political parties so entitled shall fail to file such list or lists, or whenever such list or lists when filed shall be incomplete, all such omissions shall be supplied and persons selected by the board of commissioners. Vacancies in the office of judge of election shall be filled as now provided by law. Clerks of election shall be selected as now provided by law. If any board of commissioners shall fail to comply with the provisions of this section, each and every member thereof shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than one hundred dollars for every offense, and the neglect and failure to designate any one judge properly suggested in accordance herewith, shall be a separate offense. In case of a conflict arising before such board, owing to different persons claiming the right to certify such list for any political party, the board shall have authority to decide between such lists; *Provided*, That they shall select only names included in a sworn list, as above mentioned; *And, provided, further*, That any person making a false statement in any such affidavit shall be guilty of perjury and punished as provided by law. The officers of all cities and towns, whether incorporated under general law or special charter, who may be by law authorized to appoint judges of election for any election therein, shall in like manner, upon like application, appoint the election judges for each precinct from different political parties in the manner aforesaid. Any such officer failing to comply with this provision shall be guilty of a misdemeanor, punishable as in the cases of county commissioners.

[The classification of counties above referred to was repealed by L. '91, p. 220 section 19, and is doubtless superseded by section 2521.]

Legislation. Sec. 2217. Act 1891 p. 154 § 23, cited under § 2145.

2218. Appointment of judges and clerks of election.

SEC. 83. At the several times designated by statute for the appointment of judges and clerks of election, the county commissioners of each county shall appoint three qualified electors, bona fide residents of the election precinct or district, to act as judges of election in each district or precinct in such county, two

(2) at least of whom may be members of opposite political parties. Vacancies in the office of judge of election shall be filled by the board of county commissioners, unless such vacancy occur within three days prior to the day of the general election, when such vacancy may be filled by the electors present, as now provided by law; *Provided*, That no one who is the employer, agent, superintendent, manager or boss of a number of employees, of any company, corporation, or person, carrying on mining or manufacturing, or railroad operations in any precinct, shall be appointed a judge or clerk of election; *Provided, also*, That the clerks of election shall be a bona fide member of a different political party from that to which his associate belongs.

[See also section 2217.]
[See note, section 2269.]

Legislation. Sec. 2218. Act 1901 § 1 p. 171, entitled:

AN ACT
In Relation to Elections.

2219. Clerks of elections—How chosen.

SEC. 84. The said judges of election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election; and, the said clerks of election may continue to act as such during the pleasure of the judges of the election.

Legislation. Sec. 2219. G. L. § 950. G. S. § 1174.
Framed on R. S. p. 286 § 17.

2220. Judges—Term of office—Oath.

SEC. 85. All judges of election shall, on being appointed, hold their office for one (1) year, or until their successors are appointed, and shall serve at all special elections during their term of office, and they shall severally before entering upon their duties as judges at any election take and subscribe the oath prescribed by law in such cases.

Legislation. Sec. 2220. Act of 1874 p. 111 § 14. G. L. § 1048. G. S. § 1272.

By R. S. p. 286 § 17 they held until their successors were appointed.

CITATIONS.

This section cited in holding that at an election under the annexation act the board of trustees of the town had no authority to appoint judges of election.—*Philips v. Corbin*, 8 A. 352, 46 P. 227. (Reversed as to appellate jurisdiction of the district court, 25 C. 62, 49 P. 279.)

2221. Oath of judges—How taken.

SEC. 86. Every judge of elections or other person serving on such board of registry shall, before entering upon the duties of his office, take an oath, to be administered by any justice of the peace or other officer present having power to administer oaths, faithfully to discharge the duties of registrar according to law and to the best of his skill and ability. If no such officer shall be present the oath may be administered by one judge or registrar to another.

Legislation. Sec. 2221. G. L. § 1040. G. S. § 1264.

Framed on Act of 1874 p. 110 § 6 and adding the last clause as to the registers administering the oath to each other.

2222. Oath of judges and clerks—Form.

SEC. 87. Previous to any votes being taken the judges and clerks of the election shall severally take an oath or affirmation in the following form, to wit: "I, A. B., do solemnly swear (or affirm) that I will perform the duties of judge (or clerk, as the case may be) according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same, and that I will not try to ascertain, nor will I disclose how any elector voted, if, in the discharge of my duties as judge (or clerk, as the case may be) knowledge shall come to me as to how any elector shall have voted, unless called upon to disclose the same before some court of justice."

[Judges or others acting in registering must first be sworn, section 2169.]

Legislation. Sec. 2222. G. L. § 952. G. S. § 1176.

The first part of the section is copied from R. S. p. 287 § 19 but the clause as to secrecy was added by the G. L. section.

2223. Judges may administer oaths to each other and to clerks.

SEC. 88. In case there shall be no judge, justice of the peace, or other person qualified by law to administer an oath, present at the opening of the election, to administer the oath mentioned in the preceding section, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election, and the person administering such oaths or affirmations shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Legislation. Sec. 2223. R. S. p. 287 § 20. G. L. § 953. G. S. § 1177.

2224. Vacancy in board, how filled.

SEC. 89. In cases of vacancy in the office of judge of election, or in the board of registry, at any time when they meet according to law, the vacancy may be filled by the election, by the qualified electors then present, of a qualified elector to serve as a member of such board of registry until the appearance of a judge of election duly appointed in and for such ward or precinct.

Legislation. Sec. 2224. G. L. § 1039. G. S. § 1263.

2225. Voters elect judge, when—Powers of.

SEC. 90. If any person appointed to act as a judge of the election as aforesaid shall neglect or refuse to be sworn or affirmed, or to act in such capacity, the place of such person shall be filled by the votes of such qualified voters residing within the precinct as may then be present at the place of election, and the person or persons so elected to fill such vacancy or vacancies shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

Legislation. Sec. 2225. R. S. p. 286 § 18. G. L. § 951. G. S. § 1175. R. S. p. 301 § 72 and Act 1874 p. 109 § 5 covered the same points in different language.

2226. Fees of election officers.

SEC. 91. All judges and clerks of election and messengers carrying election returns to the clerk of the election commissions in cities of the first class and in over twenty thousand inhabitants operating under special where the pay for the same is not specified in such chart outside of such cities in all counties where the county commissioners at a regular meeting so elect shall be paid at the \$5.00 per day of twelve hours or fractional part thereof or hours for time actually and necessarily spent in the discharge election duties, the compensation so received not to exceed in any case. Messengers shall be paid 10 cents per mile for mile necessarily traveled in going to and returning from the offices of the county clerk or election commission, as the case be. Immediately after the work of said judges, clerks and messengers shall be completed said judges shall certify to the county clerk the time each judge and clerk was employed, the miles traveled by each messenger and the compensation properly payable therefor, and thereupon the county clerk or election commission shall make out his or its certificate, stating the compensation to be allowed each judge, clerk and messenger, and lay the same before the board or officer authorized to pay the sums so certified to be due and payable, and the same shall be by such board or officer thereupon be ordered paid, and be paid.

In counties other than those where city and county lines are identical, where the county commissioners shall not at a regular meeting elect to pay the compensation specified in this section judges, clerks and messengers, such compensation shall be as provided in section 2227 of the Revised Statutes of 1908.

Legislation. Sec. 2226. § 1 of Act of 1911 H. B. No. 194. Substituted for § 2226, which was G. S. § 1218, G. L. § 994.

(The 1911 Act was filed in the office of the secretary of state on June 5, 1911, without the Governor's approval.)

R. S. p. 324 § 19 fixed the per diem, and § 33 p. 291 provided for the mode of payment. See next section.

2227. Fees of judges and clerks of election.

SEC. 92. The fees of judges and clerks of election shall be as follows: Each judge and clerk of elections shall be allowed

two dollars and fifty cents (\$2.50) per day for each day's service as such judge or clerk, to be paid out of the county treasury. Each messenger carrying election returns to the clerk of said county shall be entitled to the same per diem as the judges and clerks, and ten (10) cents per mile for the distance necessarily traveled in going to and returning from the office of said county clerk.

Legislation. Sec. 2227. R. S. p. 324 § 19. G. L. § 1167. G. S. § 1422.

2228. Fees of board of registry.

SEC. 93. The members of said board of registry shall receive the same compensation as allowed by law to judges of elections, for every day actually employed in the making and completing of the registry.

Legislation. Sec. 2228. R. S. p. 302 § 74. G. L. § 1041. G. S. § 1265.

G. POLLING PLACES AND BALLOT BOXES.

Section.

- 2229. County commissioners establish precincts and polling places.
- 2230. Judges may change polling places—When.
- 2231. Proclamation and notice of change of polling place.
- 2232. County commissioners provide ballot boxes—How kept—Keys.
- 2233. Polling places and compartments.
- 2234. Cards of instruction.

2229. County commissioners establish precincts and polling places.

SEC. 94. County commissioners of the several counties in this state are hereby required to divide their respective counties into as many election precincts for all general and special elections as they may deem expedient for the convenience of voters of said county, and shall designate the house or place in each precinct or ward at which elections are to be holden, and the precincts and places of holding elections thus established shall so remain until changed by the board of commissioners; *Provided*, That the board of county commissioners shall establish at

least one election precinct for every five hundred registered voters, as shown by the registry list of the respective counties at the last general election, and shall every year, if necessary, increase the number of election precincts as the number of registered voters shall be increased on said registry list, so that at least one election precinct for every three hundred registered voters may be constituted; *And, provided*, That it shall be the duty of the county commissioners at any time to change any place of holding elections upon a petition of a majority of the voters residing within said precinct; *And, provided, further*, That the precincts and wards established, and the places designated in which to hold elections at the time of the taking effect of this act, shall so remain until changed; *And, provided, further*, That no new precincts shall be established, or polling places changed at a later date than thirty days previous to any election.

Legislation. Sec. 2229. G. S. § 1171. Act 1883 p. 182 § 1, amending G. L. § 947.

The amendment consisted in the insertion of the first and the fourth provisos.

2230. Judges may change polling place—When.

SEC. 95. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled at or as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

Legislation. Sec. 2230. R. S. p. 284 § 8. G. L. § 954. G. S. § 1178.

2231. Proclamation and notice of change of polling place.

SEC. 96. Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall station a constable or some other proper person at the place where the adjournment was made from to notify all electors arriving at such place of adjournment and the place to which it was made.

Legislation. Sec. 2231. R. S. p. 285 § 9. G. L. § 955. G. S. § 1179.

2232. County commissioners provide ballot boxes—How kept—Keys.

SEC. 97. The county commissioners of each county shall provide a ballot box at the expense of the county for each place of voting, which box shall be made of glass, to be kept by the county clerk and recorder of each county and by them delivered over to their successors in office. Each of said ballot boxes shall be circular in form, with a small opening at the top thereof, and enclosed in a square wooden frame with a lid, to be fastened by three locks, no two of which can be opened by the same key; one of said keys shall be kept by each of the judges of the election last appointed, to be by them delivered to their successors in office. Should either of said judges die or remove from their precinct, meantime, the key held by them shall be surrendered to the county clerk and recorder, to be by him kept and delivered to the successor of such judge of election. The said ballot boxes shall be by the clerk and recorder of the respective counties delivered to the judges of election within three days immediately preceding any general or special election, to be by him used and returned as hereinafter provided.

Legislation. Sec. 2232. Act 1883 p. 183 § 2, G. S. § 1173, amending G. L. § 949.

The principal amendment was to introduce circular glass ballot boxes with three keys.

2233. Polling places and compartments.

SEC. 98. All officers upon whom is imposed by law the duty of designating polling places, shall provide in each polling place designated by them, a sufficient number of voting booths, or compartments, which shall be furnished with such supplies and conveniences, including shelves, pens, penholders, ink and blotting paper, as will enable the voter to prepare his ballot for voting; and in which voters may prepare their ballots screened from observation, as to the manner in which they do so; and a guard rail shall be so constructed and placed that only such persons as are inside such rail can approach within six feet of the ballot box and of such voting booths and compartments. The arrangement shall be such that the voting booth or compartment can only

be reached by passing within such guard rail. And both they and the ballot boxes shall be in plain view of the election officers and of those outside the guard rail. Each booth or compartment shall be at least three feet square, and shall contain a shelf, which shall be at least one foot wide, extending across one side of the booth or compartment at a convenient height for writing, and shall be so arranged that the voter can prepare his ballot screened from observation. No person other than the election officers and the watchers provided by law, and those admitted for the purpose of voting, as hereinafter provided, shall be permitted within such guard rail, except by authority of the judges of election, and then only when necessary to keep order and enforce the law. The number of such voting booths or compartments shall not be less than one for every fifty voters who voted at the last election in the district. The officers who are charged with the duty of providing voting booths or compartments shall also furnish for each polling place in their respective towns and cities, a ballot box, which shall be large enough to properly receive and hold the ballots to be cast for candidates for offices, in conformity with the provisions of this act. The expense thereof shall in all cases be a public charge, to be provided for in the same manner as other election expenses. At the times now prescribed by law, and in each year hereafter, the officers charged by law with the division or alteration of the election precincts shall alter or divide the existing election precincts, whenever necessary, in such manner that each election precinct shall contain not more than two hundred and fifty voters.

[For arrangement of polling place where machine is used, see section 2348.]

Legislation. Sec. 2233. Act 1891 p. 155 § 24, cited under § 2145.

2234. Cards of instruction.

SEC. 99. The county clerk of each county, of the city or town clerk, as the case may be, charged with the duty of providing ballots, shall cause to be printed and furnished as herein provided, in large type, on cards in English, and in such other languages as he or they may deem necessary, instructions for the guidance of voters in preparing their ballots. Twelve such cards

so printed in all the languages determined upon shall be furnished to the judges of election in each election precinct, at the same time and in the same manner as the printed ballots. The election judges shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling place upon the day of the election. Such cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done; (1) to obtain ballots for voting; (2) to prepare the ballots for deposit in the ballot box; (3) to obtain a new ballot in the place of one spoiled by accident or mistake; (4) to obtain assistance in marking ballots.

Legislation. Sec. 2234. Act 1891 p. 161 § 30, cited under § 2145.

H. FORM, PREPARATION AND DISTRIBUTION OF BALLOTS.

Section.

2235. Form of ballot.

2236. Ballot shall not contain emblem—Straight and scratched ballots.

2237. Black corner on ballot—Judges number ballots.

2238. Failure of official to number ballots—Penalty.

2239. Penalty for omitting to print black corner.

2240. Correction of errors in ballots—Proceedings in case of controversy.

2241. Preparation of ballots.

2242. Number of ballots to be provided.

2243. Distribution of ballots.

2244. Substitute ballots.

2245. Ballots printed and distributed at public expense.

2235. Form of ballot.

SEC. 100. Every ballot, intended for the use of voters, shall contain the names of all candidates for offices to be balloted for at that election, whose nominations have been duly made and accepted as herein provided, and who have not died or withdrawn, and shall contain no other names of persons except that, in case of electors for president and vice-president of the United States,

the names of the candidates for president and vice-president shall be added to the party or political designation; the name of each person nominated shall be printed upon the ballot in but one place, but there shall be added opposite to the name of each person nominated the party or parties or political designation, expressing in not more than three words for one party, as specified in each of the certificates of nomination nominating him for the office. The names of the candidates for each office shall be arranged under the designation of the office, in alphabetical order, according to surnames, except that the names of the candidates for the offices of electors of president and vice-president of the United States shall be arranged in groups, as presented in the several certificates of nomination. There shall be left at the end of the list of candidates for each different office as many blank spaces as there are persons to be elected to such office, in which the elector may write the name of any person not printed on the ballot for whom he desires to vote as a candidate for such office. Whenever the approval of a constitutional amendment or other question is submitted to the vote of the people, such questions shall be printed upon the ballot after the lists of candidates. The ballots shall be so printed as to give to each voter a clear opportunity to designate by a cross mark (X) in a sufficient margin at the right of the name of each candidate, his choice of candidates and his answer to the questions submitted, and on the ballot may be printed such words as will aid the voter to do this, as "Vote for one," "Vote for three," "If you have not voted a straight ticket above, place a cross mark (X) with ink opposite each name you wish to vote for in the blank space left for that purpose," and the like. It shall be lawful to designate the political party or nominating committee by which each list of candidates is nominated, by an appropriate emblem or design, such as a flag, eagle, rooster or other device, as may be set forth in the certificate of nomination: *Provided*, No two sets of nominations shall use or have the same device, and each political party or nominating committee shall have the prior right to use the device used by it at the last similar election. When any political party or nominating committee in its certificate of nomination certifies any such emblem or device, the name or title of such

party or nominating committee (in not more than three words), together with such emblem, or device, opposite thereto, shall be placed in a line at the top of the ballot with a blank square opposite thereto, in which a cross mark may be placed by the voter; all such party designations and emblems so certified shall be placed in parallel lines, one under another, on the top part of the ballot, above the list of candidates. Proper words of instruction shall also be inserted, such as these: "To vote a straight ticket, place a cross mark (X) with ink in the square opposite your party emblem." It shall be lawful for a voter to make a cross mark in any such square following any such party name and emblem, and such mark shall indicate and be counted as a vote for each and every candidate on the ballot nominated by the party or committee after whose name and emblem the mark is so placed. The extreme top part of each ballot, above the portion which contains the names of the candidates to be voted for, and the party and committee names and emblems, shall be divided by two perforated lines, into two spaces, each of which shall not be less than an inch in width, the top portion being known as the stub, and the next portion as the duplicate stub; upon each of said stubs nothing shall be printed except the number of the ballot, and the same number shall be printed upon both stubs. Stubs and duplicate stubs of ballots shall both be numbered consecutively by numbers thereon. All ballots shall be uniform and of sufficient length and width to allow for the names of candidates and officers to be printed in clear, plain type, as herein required, with a space of at least one-half inch between the different columns on said ballot. On the back of each ballot shall be printed, in capital letters, in two lines, pica gothic, or type not smaller in size, the endorsement, "Official ballot for" and after the word "for" shall follow the designation of the election precinct or political division, for which the ballot is prepared, and the date of the election, and a fac simile of the signature of the clerk who has caused the ballot to be printed. The ballot shall contain no caption, or other endorsement, except as in this section provided. Each county, city or town clerk shall use precisely the same quality and tint of paper and kind of type, and quality and tint of plain black ink for all ballots furnished by him at one election.

Whenever candidates are to be voted for only by the voters of particular district, county, city, town or other political division the names of such candidates shall not be printed on any other ballot than those provided for use in such district, county, city, town or political division respectively. The ballots shall be of such form, and the endorsements thereon so printed, that they may be folded in such a way that when so folded the whole endorsement shall be visible, and the contents of the ballot shall not be exposed. There shall be but one ballot box at each polling place for receiving ballots cast for candidates for office.

[Section 2235 must be considered with section 2236.]

[See also section 2259 as to straight and scratched tickets.]

Legislation. Sec. 2235. Act 1894 p. 61 § 2, amending § 18 Act 1891 p. 151, cited under § 2145. See note to § 2236.

CITATIONS.

Sections 1281 and 1282 of the G. S. which referred to form, size, color of paper and etc. of ballots cited in holding that a ballot would not be declared illegal merely because printed on paper of different quality, color or dimension.—*Kellogg v. Hickman*, 12 C. 259, 21 P. 326. (Dissenting opinion 273.)

Under the act of 1891 the failure on the part of a clerk to make proper publication of nominations, or error in printing the names of candidates under a wrong party devise will not necessarily invalidate the ballots.—*Allen v. Glynn*, 17 C. 340, 348, 361, 29 P. 670.

Making a cross against emblem and also against one or more names in another list voided the ballot as to the office doubly marked.—*Heisell v. Landrum*, 23 C. 66, 46 P. 120.

Where a county clerk made a mistake in designating a candidate as nominee of a party represented by an emblem, the opposing candidate taking no action to correct it could not afterwards take advantage of the defect.—*Dickinson v. Freed*, 25 C. 303, 55 P. 813.

Right to the use of emblem before the passage of the act of 1899.—*Schafer v. Whipple*, 25 C. 401-404, 55 P. 181. *Twombly v. Smith*, 25 C. 441, 55 P. 260. *Kratzer v. Allen*, 10 A. 493, 50 P. 209.

This section cited in an election contest case.—*Nicholls v. Barrick*, 27 C. 436, 62 P. 203.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

CITATIONS CONTINUED.

A separate column for the political designations is permissible if not required by this section.—*Montrose County v. Fredrick* (May, 1911), 115 P. 515.

2236. Ballot shall not contain emblem—Straight and scratched tickets.

SEC. 101. From and after the passage of this act no emblem, device or party designation shall be used on the official ballot at any election in this state by which a voter may vote for more than one candidate by placing a single cross mark (X) on the ballot: *Provided*, That across the head of the ballot, and just above the lists of nominations, shall be printed the words, "I hereby vote a straight ticket, except where I have marked opposite the name of some other candidate," and any voter desiring to vote a straight ticket may write within the blank space above provided for, the name of the party whose ticket he may wish to vote, and any ballot so cast shall be counted for all the nominees upon said ticket, except when the voter has marked opposite the name or names of any individual candidate of some other party, which individual marks opposite such individual candidate shall count for them, and shall not be counted for the candidates for the same office upon the ticket whose party name the voter has so filled in the blank at the head of the ticket. In case there are two or more candidates upon each ticket for offices bearing the same name, when the voter fills in the party name, and also marks opposite a particular candidate upon some other ticket for that office, he shall draw a line through the name of the candidate upon the ticket he has filled in the party name of, which he does not wish counted by reason of his having voted for a candidate upon an opposite ticket for that office. In case the voter marks opposite the name of a candidate where there is more than one candidate upon each ticket for offices bearing the same name, and does not draw a line through the name of any candidate upon the ticket he has filled in the party name of, such special mark opposite the individual candidate shall not be counted.

[Section 2236 must be considered with section 2235.]

Secs. 2236-2238 COLORADO STATUTES ANNOTATED.

Legislation. Sec. 2236. Act 1899 p. 177 § 1, entitled:

AN ACT

To Prevent the Use, After the Passage of This Act, of Any Emblem or Party Designation on the Official Ballot, at any Election in This State, by which a Voter May Vote for More Than One Candidate, by Placing a Single Cross (X) Mark on the Ballot.

This Act eliminates the emblem which had been introduced in 1891 p. 151 § 18 now, as amended, § 2235.

CITATIONS.

Where a ticket was generally spoken of as a fusion ticket, writing the word "fusion" clearly showed the intention of the voter.—*Nicholls v. Barrick*, 27 C. 437, 62 P. 203.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

2237. Black corner on ballot—Judges number ballots.

SEC. 102. A space two inches square in the upper left hand corner, immediately below the perforated lines, on the face of all ballots, used or to be used at any election hereafter held, shall be made black; and it shall be the duty of all election judges or clerks to write the number of said ballot on the opposite side of said black square and turn and paste down the corner thereof in the manner as is now provided by law.

Legislation. Sec. 2237. Act 1901 p. 170 § 1, entitled:

AN ACT

In Relation to Election Ballots; Providing a Punishment for the Violation Thereof, and Repealing All Acts and Parts of Acts in Conflict Herewith.

2238. Failure of officials to number ballots—Penalty.

SEC. 103. Any election judge or clerk who shall wilfully violate the provisions of this act shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a term not less than three months, nor more than one year, or by both such fine and imprisonment.

Legislation. Sec. 2238. Act 1901 § 2, cited under § 2237.

2239. Penalty for omitting to print black corner.

SEC. 104. Any county clerk who shall print any ballot without complying with the provisions of this act shall be guilty of a misdemeanor and punished accordingly.

[This act comprises sections 2237 to 2239.]

Legislation. Sec. 2239. Act 1901 § 3, cited under § 2237.

2240. Correction of errors in ballots—Proceeding in case of controversy.

SEC. 105. Whenever it shall appear by affidavit of a candidate or his agent that an error or omission has occurred in the publication of the names or description of the candidates nominated for office, or in the printing of the sample or official ballots, the district or county court, or a judge thereof, either in term time or vacation, may, upon petition of such candidate, or his agent, by order require the county clerk, city clerk, or town clerk, charged with the duty in respect to which an error or omission has occurred, to forthwith correct such error, or to forthwith show cause why such error should not be corrected. Costs, including a reasonable attorney's fee, may be taxed, in the discretion of such court or judge, against either party. The county clerk, city clerk, town clerk shall also, on their own motion, correct without delay any error in all ballots which he or they may discover, or which shall be brought to his or their attention, and which can be corrected without interfering with the timely distribution of the ballots as herein provided.* Whenever any controversy shall arise between any official charged with any duty or function under this act, and any candidate, or the officers or representatives of any political party, or persons who have made nominations, upon the filing of a petition by any such official or persons, setting forth in concise form the nature of such controversy and the relief sought, which petition shall be under oath, it shall be the duty of such court, or the judge thereof in vacation, to issue an order commanding the respondent in such petition to be and appear before the court or judge, and answer under oath to such petition; and it shall be the duty of the court or judge to summarily hear and dispose of any such

issues, with a view of obtaining a substantial compliance with the provisions of this act by the parties to such controversy, and to make and enter orders and judgments, and issue the writ or process of such court to enforce all such orders and judgments. The provisions of this act shall be liberally construed, so as to carry out the intent of this act, and of political parties, nominees and others in proceedings under this act.

Legislation. Sec. 2240. Act 1894 p. 64 § 4, amending Act 1891 p. 152 § 20, cited under § 2145.

The amendment adds all that follows the star.

CITATIONS.

Failure on the part of a clerk to make proper publication or error in printing the name of each candidate, will not necessarily invalidate the ballots.—*Allen v. Glynn*, 17 C. 340, 346, 29 P. 671. (Dissenting opinion 349).

If the nominations were improperly certified by the secretary of state, it constituted no such error as the county clerk was authorized to correct.—*Smith v. Harris*, 18 C. 278, 32 P. 617.

This section cited in an action where each of two contending factions claimed the party emblem.—*Peo. v. Johnson*, 23 C. 154, 42 P. 682. *Peo. v. McGaffey*, 23 C. 158, 46 P. 931.

The amendment of 1894 in no way enlarges the duties or extends the powers of the secretary of state.—*Peo. v. McGaffey*, 23 C. 158, 46 P. 931.

In a proceeding under sec. 2161, this section contemplates the taking of evidence where the issues require it.—*Leighton v. Bates*, 24 C. 307, 308, 50 P. 857.

Proper practice stated to invoke the jurisdiction of the supreme court, and when a review of the decision of the lower court will be entertained.—*Id.*

This section cited in dissenting opinion in an action where it was held that the chairman of the national committee had no authority to remove the chairman of the state committee.—*Whipple v. Braod*, 25 C. 416, 55 P. 175.

2241. Preparation of ballots.

SEC. 106. Except as in this act otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election of public officers in which the voters or any of the voters within the county participate, and to cause to be

printed on the ballot the name of every candidate, whose nomination has been certified to or filed with the county clerk in the manner provided for in this act. It shall be the duty of the clerk of any city or town to provide printed ballots for every election of public officers in which the voters, or any of the voters, of such city or town participate, and to cause to be printed on the ballot the name of every candidate whose nomination has been certified to or filed with such city or town clerk in the manner provided for in this act. Sample ballots printed upon paper of a different color from the official ballots, but in the form of those to be used on election day, each containing the names of the candidates which are to be printed upon the appropriate official ballot, shall be printed and in the possession of the county clerk or other officers charged with the duty of preparing such ballots, seven days before the day of election, subject to public inspection. The official ballots shall be printed and in the possession of the county clerk or city or town clerk at least four days before election, and subject, also, to inspection by the candidates and their agents. Sample ballots shall be delivered to the election officers and posted with the cards of instruction provided in section 30.

[Section 30 above referred to is section 2234.]

Legislation. Sec. 2241. Act 1891 p. 150 § 17, cited under § 2145.

CITATIONS.

As a general rule it is too late, after they have been voted, to interpose objections to the ballots for mere irregularities in the printing thereof.—*Allen v. Glynn*, 17 C. 338, 29 P. 676. (Dissenting opinion 355, 362.)

It was the duty of the county clerk to cause to be printed the names as certified to him by the secretary of state.—*Smith v. Harris*, 18 C. 278, 32 P. 617.

This section cited in dissenting opinion, holding that the court should have refused to take jurisdiction because of delay.—*Capps v. Krier*, 25 C. 479, 55 P. 167.

2242. Number of ballots to be provided.

SEC. 107. The county clerk of each county, and the city clerk of each city, and the town clerk of each town, when charged by this act with the duty of printing and preparing ballots, shall

provide, for each election precinct in a county, city or town, one hundred ballots for every fifty or fraction of fifty voters registered at the last preceding election in the election precinct. If there is no registry in the precinct, such ballots shall be provided to the number of one hundred of each kind for every fifty or fraction of fifty voters who voted at the last preceding election in such precinct. When a precinct shall be divided, or the boundaries changed, the county clerk, or city clerk, or town clerk, as the case may be, must ascertain as nearly as possible the number of voters in the new precinct or precincts and provide therefor a sufficient number of ballots in the above proportion.

Legislation. Sec. 2242. Act 1894 p. 64 § 3, amending Act 1891 p. 152 § 19, cited under § 2145.

The amendment cuts down the number of ballots to be prepared from 200 to 100.

2243. Distribution of ballots.

SEC. 108. The county clerks of the various counties of the state, and the city and town clerks, as the case may be, shall prior to an election, cause to be delivered, at the expense of the county, city or town to the election judges in the respective precincts the proper number of ballots provided for the use of the voters at such election in such precinct. The same shall be sent in two sealed packages for each election precinct in said county, city or town, with the marks on the outside of each, clearly stating the election precinct and polling place for which it is intended, together with the number of ballots enclosed. Each of such packages shall contain one-half of the number of ballots intended for such election precinct. Such packages shall be delivered between the Saturday noon and the Monday noon before election day, one to each of the two judges of election in each precinct, who are members of the political parties which cast the largest and next largest number of votes at the last general state election. Receipts for ballots thus delivered shall be given by the election judges who receive them, and filed with the clerk of the county, city or town, as the case may be, who shall also keep a record of the time when, and the manner in which each of said packages was sent and delivered. The several election judges receiving

such packages shall, at the opening of the polls on election day, produce the same, with the seals unbroken, in the proper polling place, and shall, in the presence of all three judges, open the said packages.

Legislation. Sec. 2243. Act 1891 § 21, cited under § 2145.

2244. Substitute ballots.

SEC. 109. If the ballots to be furnished to any election judges, as herein provided, shall not be delivered at the time above mentioned, or if after delivery they shall be destroyed or stolen, it shall be the duty of the said clerk of the county, city or town to cause other ballots to be prepared, as nearly in the form prescribed as practicable, with the word "Substitute," printed in brackets, immediately under the fac simile signature of the clerk preparing such ballots, and upon receipt of ballots thus prepared from such clerk, accompanied by a statement under oath that the same have been so prepared and furnished by him, and that the original ballots have so failed to be received, or have been destroyed or stolen, the election judges shall cause the ballots so substituted to be used at the election. If from any cause none of the official ballots nor substitute ballots prepared by the county, or city or town clerk, as herein prescribed, shall be ready for distribution at any polling place, or if the supply of ballots shall be exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used until substitutes prepared by the clerk, as provided in this section, can be printed and delivered.

Legislation. Sec. 2244. Act 1891 § 22, cited under § 2145.

CITATIONS.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

2245. Ballots printed and distributed at public expense.

SEC. 110. All ballots cast in elections for public officers or for the decision of any question submitted to electors, within

this state, shall be printed and distributed at public expense. The printing of ballots and cards of instruction for the voters in each county, and the delivery of the same to the election officers as hereinafter provided, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses, but the expense of printing and delivering ballots and cards of instruction to be used in municipal elections shall be a charge upon the city or town in which such election shall be held.

Legislation. Sec. 2245. Sec. 1 Act 1891, cited under § 2145.

This is one of the material innovations of the Australian ballot act. Prior to this the cost of printing ballots fell entirely upon the candidates or the managers of the political parties.

Sec. 44 of the Act repealed G. S. §§ 1172, 1180, 1181, 1182, 1184, 1185, 1198, 1199, 1281, 1282, 1283.

CITATIONS.

This section cited in considering the effect of errors in printing ballots.—*Allen v. Glynn*, 17 C. 339, 342, 29 P. 670.

This section cited in holding that where there were two sets of nominations by the same party, the secretary of state should have certified both tickets.—*Peo. v. Dist. Court*, 18 C. 30, 31 P. 339.

This section referred to in considering the authority of a nominating committee to fill a vacancy for which no nomination had been made.—*Peo. v. Kerwin*, 10 A. 476, 51 P. 532.

A county is liable for the reasonable value of printing official ballots, election notices and list of nominations.—*San Juan County v. Tulley*, 17 A. 114, 67 P. 346.

I. CONDUCT OF ELECTIONS.

Section.

- 2246. Hours of voting.
- 2247. Polls kept open till evening.
- 2248. Judges open ballot box before proclamation to open polls.
- 2249. No vote received unless name registered.
- 2250. Rules for judges in admitting votes.
- 2251. Clerks keep poll list—Form.
- 2252. Preparation of ballot by election officials—Watchers and challengers.
- 2253. Grounds for challenge—Questions to challenged voter.
- 2254. Oath of challenged voter.
- 2255. Refusal to answer—Vote rejected.
- 2256. Refusal to take oath—Vote rejected.

I. CONDUCT OF ELECTIONS.

Continued.

Section.

- 2257. Clerks write "Sworn" on poll book.
- 2258. Duty of judge to challenge.
- 2259. Preparation of ballot by voter—Manner of voting.
- 2260. Refusal to receive legal vote—Penalty.
- 2261. Assistance to illiterate and disabled voters.
- 2262. Spoiled ballots—Record of vote.
- 2263. Count of votes.
- 2264. Clerk keep tally lists.
- 2265. Imperfect or defective ballots.
- 2266. Marking imperfectly names of candidates voted for.
- 2267. Judges' certificate—Form—Signatures—Sealing—Returning—Penalty.
- 2268. Watchers.
- 2269. Penalty for interference with watcher.
- 2270. Judges designate and appoint constables.
- 2271. Fees of constables—Special constables.

2246. Hours of voting.

SEC. 111. At all elections held under this act, the polls shall be opened at seven o'clock in the morning, and continue open until seven o'clock in the evening of the same day; *Provided, however,* That if a full board of judges of election shall not attend at the hour of seven o'clock in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election as provided by law, the election may in that event commence at any hour before the time for closing the polls shall arrive, as the case may require. Upon the opening of the polls, proclamation shall be made by one of the clerks, and thirty minutes before the closing of the polls proclamation shall be made, in like manner, that the polls will close in thirty minutes.

Legislation. Sec. 2246. Act 1891 § 41, cited under § 2145.

The text reads practically the same as R. S. p. 287 § 21, G. L. § 956, except that under those sections the polls opened at 8 a. m. Changed to 7 o'clock by Act 1883 p. 183 § 3. G. S. § 1180.

CITATIONS.

The powers of the supreme court may be invoked to prevent judges of election and other officers from committing frauds at an election.—*Peo. v. Tool*, 35 C. 226, 86 P. 224, 229, 231.

CITATIONS CONTINUED.

District courts are not authorized to control and supervise an election merely because the supreme court has assumed a similar jurisdiction.—*Peo. v. Dist. Court*, 37 C 443, 86 P. 87, 92 P. 958.

The jurisdiction to supervise a state and county election is vested exclusively in the supreme court.—*Aichele v. Peo.*, 40 C. 482, 90 P. 1122.

2247. Polls kept open till evening.

SEC. 112. The polls at any election shall not be closed after once being opened, until they are finally closed in the evening.

Legislation. Sec. 2247. G. L. § 973. G. S. § 1197.

We do not find any equivalent section in the territorial statutes.

2248. Judges open ballot box before proclamation to open polls.

SEC. 113. It shall be the duty of the judges of election, immediately before proclamation is made of the opening of the polls, to open the ballot box in the presence of the people there assembled and turn it upside down so as to empty it of everything that may be in it, and then lock it securely; and it shall not be reopened until for the purpose of counting the ballots therein at the close of the election.

Legislation. Sec. 2248. G. L. § 969. G. S. § 1193.

2249. No vote received unless name registered.

SEC. 114. No vote shall be received at any election unless the name of the person offering to vote shall be found on the said certified registry list.

Legislation. Sec. 2249. Act of 1874 p. 109 § 4. G. L. § 1038. G. S. § 1262.

2250. Rules for judges in admitting votes.

SEC. 115. The judges of election in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

First—That place shall be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Second—A person shall not be considered or held to have lost his residence who shall leave his home and go into another state, territory or county of this state, for temporary purposes merely, with an intention of returning.

Third—A person shall not be considered or held to have gained a residence in this state, or in any county in this state, when retaining his home or domicile elsewhere.

Fourth—If a person remove to any other state, or to any of the territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this state.

Fifth—If a person remove from one county, precinct or ward in this state to any other county, precinct or ward in this state, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county, precinct or ward from which he removed.

Legislation. Sec. 2250. G. L. § 962. G. S. § 1186.

2251. Clerks keep poll list—Form.

SEC. 116. Each clerk of the election shall keep a poll list which shall contain one column headed, "Names of voters," and one column headed, "Number on ballot." The name and the number on the ballot of each elector voting shall be entered by each clerk in regular succession under the said headings in his poll list.

Legislation. Sec. 2251. G. L. § 972. G. S. § 1196. Poll books were required to be kept by R. S. p. 293 § 45. Substituted by Act 1872 p. 127 §§ 1, 2. But the ballots were not numbered before the Act of 1877. G. L. § 957. G. S. § 1181.

2252. Preparation of ballot by election officials—Watchers and challengers.

SEC. 117. Any person desiring to vote shall give his name, and, if requested so to do, his residence, to one of the judges of election, who shall thereupon announce the same in a loud and

distinct tone of voice, clear and audible, and if such name is found upon the registry list by the election judge or clerk having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail, as above provided. An election judge or clerk shall give him one, and only one, ballot, which shall be removed from the package of ballots by tearing the same along the perforated line between the stub and duplicate stub, and before delivering such ballot to the voter, the judge or clerk of election having charge of the ballots shall endorse his initials on the duplicate stub. The name of such voter shall be immediately checked on said list with the number of such duplicate stub. Besides the election officers and watchers, not more than four voters in excess of the number of voting shelves or compartments provided shall be allowed in said enclosed space, within said guard rail, at one time, except as provided in section twenty-eight. Each of the political parties which cast the largest and next largest number of votes at the last general election in the state shall be entitled to have one person as watcher within the guard rail during the casting and counting of votes and declaration of the result thereof. Such person shall be designated and his selection made known to the election officers by an affidavit made by the acting chairman of the county or state committee of each of such parties; *Provided*, That in case of temporary absence for meals, or by reason of sickness or otherwise, the person so selected may have substituted for himself some other person of like political belief, such substitute to be made known to the election judges by an affidavit of the person first so selected as watcher. When any person shall make application for a ballot, his right to vote at that poll and election may be challenged, and such proceedings shall thereupon be had before the judges of election as are now prescribed in case of challenge. If the person so applying is not entitled to vote, no ballot shall be delivered to him. Any person may also be challenged, as now provided by law, when he shall offer his ballot for deposit in the ballot box. Two challengers, representing each political party or set of nominations, shall be permitted to remain just outside the guard rail, where they can plainly see what is done within the polling place, except within the said booths or compartments. The said polling

place shall be so arranged that every part thereof, except inside the said booths or compartments, may be in full view of such challengers and watchers.

[Section 28 above referred to is section 2261.]

[See also as to watchers and challengers, section 2213.]

Legislation. Sec. 2252. Act 1891 p. 156 § 25, cited under § 2145. There were no similar provisions in any prior Act.

2253. Grounds for challenge—Questions to challenged voter.

SEC. 118. If a person offering to vote be challenged as unqualified by one of the judges of election, or by an elector, one of the judges shall tender to him the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, and qualification of an elector at this election.

First—If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions: *First*—Are you a citizen of the United States? *Second*—Are you a native, or naturalized citizen? And if neither; have you declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization, at least four months previous to to-day? *Third*—Have you become a citizen of the United States, by reason of the naturalization of your parents, or one of them? *Fourth*—Where were your parents, or one of them, naturalized? If the person offering the vote claims to be a naturalized citizen of the United States, or that he has, four months previous to the election, declared his intention to become such, he shall state, under oath, where and in what courts he was naturalized.

Second—If the person be challenged as unqualified, on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or one of them, shall put the following questions: *First*—Have you resided in this state for six months immediately preceding this election, and during that time have you retained a home or domicile elsewhere? *Second*—Have you been absent from this state within the six months immediately preceding this election? *Third*—If so, when

you left, was it for a temporary purpose, with the design of **re**turning, or did you intend remaining away? *Fourth*—Did you while absent, look upon and regard this state as your home? *Fifth*—Did you, while absent, vote in any state or territory?

Third—If the person be challenged on the ground that he **has** not resided in the county ninety days, or in the precinct, or ward ten days, one of the judges shall question him as to his residence in the county, precinct, or ward, in a manner similar to the before mentioned method of questioning a person as to his residence in this state.

Fourth—If the person be challenged as unqualified, on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following question: Are you twenty-one years of age, to the best of your knowledge and belief? The judges of election, or one of them, shall put all such other questions to the person challenged, under the respective heads, aforesaid, as may be necessary to test his qualifications as an elector at that election.

[For present qualifications of an elector see section 2146-2150.]

Legislation. Sec. 2253. Act 1885 p. 192 § 1, amending G. S. § 1187. G. L. § 963. The amendment changed 30 days (referring to residence in county) to read 90 days. All that part of the section which refers to persons who have declared their intention is abrogated by the constitutional amendment of 1902 Art. VII § 1.

2254. Oath of challenged voter.

SEC. 119. If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: You do solemnly swear (or affirm) that you are a citizen of the United States (or declared your intention of becoming such at least four months previous to this election), of the age of twenty-one years; that you have been a resident of this state for six months next preceding this election, and have not retained a home or domicile elsewhere; that you have been for the last ninety days, and now are, a resident of this county; that you have been for the last ten (10) days, and now are, a resident of this precinct (or ward, as the case may be), and that you have not voted at this election.

[See note, section 2253.]

Legislation. Sec. 2254. Act 1885 p. 191 § 1, amending G. S. 1189. G. L. § 965. The notes to § 2253 apply to this section also.

2255. Refusal to answer—Vote rejected.

SEC. 120. If the person challenged as aforesaid shall refuse to answer fully any question which shall be put to him as aforesaid, the judges shall reject his vote.

Legislation. Sec. 2255. G. L. § 964. G. S. § 1188.

2256. Refusal to take oath—Vote rejected.

SEC. 121. If any person shall refuse to take the oath or affirmation so tendered, his vote shall be rejected; *Provided*, That after such oath shall have been taken the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

Legislation. Sec. 2256. G. L. § 966. G. S. § 1190.

The first sentence of the text corresponds to the last sentence of sec. 26 R. S. p. 288 which section contained the form of oath or affidavit to be tendered. That part of the affidavit which proscribed Confederate soldiers under Act of 1864 p. 80 § 2, was cut out by amendment in the Act of 1872 p. 152 § 1.

2257. Clerks write "Sworn" on poll book.

SEC. 122. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in section forty (40) of this act, it shall be the duty of the clerks of the election to write on the poll books at the end of the person's name, "Sworn."

[Section 40 referred to is section 2254.]

Legislation. Sec. 2257. G. L. § 967. G. S. § 1191.

2258. Duty of judge to challenge.

SEC. 123. It shall be the duty of any judge of election to challenge any person offering to vote whom he shall believe not to be qualified as an elector.

Legislation. Sec. 2258. G. L. § 968. G. S. § 1192.

2259. Preparation of ballots by voter—Manner of voting.

SEC. 124. On receiving his ballot the voter shall forthwith,

and without leaving the enclosed space, retire alone to one of the voting shelves or compartments so provided, and shall prepare his ballot by marking, in ink, in the appropriate margin or place, a cross (X) opposite the name of the candidate of his choice for each office to be filled; and in case of a question submitted to a vote of the people, by marking in the appropriate margin or place a cross (X) against the answer which he desires to give; and in case of a vote for an entire or straight ticket or list of candidates, by making a cross (X) in the appropriate square after the name and emblem designating such ticket or list of candidates. Before leaving the voting shelf or compartment, the voter shall fold his ballot without displaying the marks thereon, in the same way it was folded when received by him, so that the contents of the ballot shall be concealed and the stub can be removed without exposing any of the contents of the ballot, and he shall keep the same so folded until he has voted. Each voter who has prepared his ballot, and is ready to vote as aforesaid, shall then leave the compartment and approach the judges of election having the ballot box in charge, and give his name to one of the judges of election, who shall announce it in a loud and distinct tone of voice, clear and audible. The voter's ballot shall be handed to the judge in charge of the ballot box, who shall announce the name of such voter, and the number upon the duplicate stub of his ballot; which number must correspond with the stub number previously checked in front of his name by the election judge or clerk who handed him his ballot; if the stub number of the ballot corresponds and is identified by the initials of the judge or clerk placed thereon, the judge or clerk shall then remove the duplicate stub from such ballot. The judge or clerk shall immediately write the name of such voter upon the poll list, and shall take the ballot of such voter and number it in ink, in one corner, upon the top thereof, in such manner as not to expose or show how the voter has voted, the same to be numbered in the order in which it shall be received, consecutively, and so as to permit the corner to be turned and pasted down with mucilage, which shall then be done so that the number is not thereafter visible, and such seal shall only be broken in case of contested election; and the same number shall be recorded by the election judge or clerk on the list of voters beside

the name of such voter. Such ballot shall then be returned by said judge or clerk to the voter, who shall thereupon, in full view of the judges of election, deposit the same in the ballot box, with the official endorsement on said ballot uppermost. Each voter shall mark and deposit his ballot without undue delay, and shall quit said enclosed space as soon as he has voted. No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said enclosed space more than ten minutes, nor to occupy a voting shelf or compartment for more than five minutes, in case all such shelves or compartments are in use and other voters are waiting to occupy the same. Besides the election officers not more than four voters in excess of the number of voting shelves or compartments provided, shall be allowed in said enclosed space at any one time, except as provided in section 28. No voter not a judge or clerk of election, whose name has been checked on the registry list of the ballot officers, shall be allowed to re-enter said enclosed space during said election. It shall be the duty of each and all of the judges of election to secure the observance of the provisions of this section and of other sections relative to the duties of judges and clerks of election.

[This section, in so far as it refers to voting a straight ticket, has been amended by section 2236.]

[Section 28 referred to is section 2261.]

Legislation. Sec. 2259. Act 1894 p. 65 § 5, amending Act 1891 p. 157 § 26, cited under § 2146.

The amendment is a change of language in the clause allowing vote for a straight ticket. The emblem is no longer in use. § 2236.

CITATIONS.

This section cited in determining the effect of errors in printing ballots.—*Allen v. Glynn*, 17 C. 341, 29 P. 675.

Construction of ballot where voter marked opposite emblem and also opposite some names of same party, and where cross mark was out of place.—*Young v. Simpson*, 21 C. 462, 42 P. 666.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

2260. Refusal to receive legal vote—Penalty.

SEC. 125. If any judge or the judges of any election shall

wilfully and maliciously refuse to receive the ballot of any qualified elector, who shall take or offer to take the oath prescribed by this act, in such case every judge so refusing or neglecting to receive the vote or ballot, when the same shall be presented, shall be liable to be indicted, and on conviction thereof shall be fined five hundred dollars, and imprisoned not exceeding thirty days; and for every refusal or neglect to receive such vote, the party aggrieved may have an action on the case against the said judge or judges; the damages in such case shall not exceed the sum of five hundred dollars.

Legislation. Sec. 2260. G. L. § 977. G. S. § 1201.

R. S. p. 292 § 40 corresponds to the text but did not contain the qualifying words "wilfully and maliciously" nor the clause giving the civil action for damages.

2261. Assistance to illiterate and disabled voters.

SEC. 126. Any voter who declares under oath to the inspectors of election that he can not read or write, or that, by reason of physical disability, he is unable to prepare his ballot without assistance, shall upon his request receive the assistance of any two of the election judges or clerks, who are of different political parties, in the marking thereof; and such officers shall certify on the outside thereof that it was so marked with their assistance, and shall thereafter give no information regarding the same. The same two judges or clerks shall not together successively act as such assistants. The judges of election are hereby qualified to administer such oath, and a memorandum shall be made on the poll lists of every instance when an oath was administered to a voter as herein provided, stating what facts were sworn to, the name of affiant, and the name of the judges or clerks who aided the voter in the preparation of his ballot. No officer who assists a voter in the preparation of his ballot, as herein provided, shall, in any manner, request, persuade, or induce, or seek to persuade or induce, any such voter to vote for any particular candidate or candidates. Nor shall any such officer reveal to another the name of any candidate for whom the voter has voted, or anything that took place while he was assisting such voter in preparing such ballot for voting. No voter shall divulge to any one within the

polling place the name of any candidate for whom he intends to vote, nor shall he ask for or receive the assistance of any person within the polling place, in the preparation of his ballot, except as provided in this section. When any voter, in addition to the oath required hereinbefore by this section, shall also make oath that he can not speak and understand, when spoken, the English language, the election judges may select two persons, one from each political party, who shall act as interpreters, and who shall take the oath taken by election judges as nearly as may be, which interpreters may assist such persons who can not speak or read the English language in making up their ballots.

[For assistance to voter where machine is used, see sections 2349 to 2350.]

Legislation. Sec. 2261. Act 1891 § 28, cited under § 2145.

2262. Spoiled ballots—Record of vote.

SEC. 127. No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The ballots thus returned shall be immediately cancelled, and together with those not distributed to voters, shall be preserved, and with the poll list used by the election judges and clerks, which shall be certified by them to be such, shall be secured in an envelope, sealed and sent to the several town, city and county clerks. The election officers shall also at the same time file with the county clerk, city clerk or town clerk, as the case may be, a statement in writing showing the number of ballots voted (making a separate statement of the number of unofficial ballots, if any, voted, as provided in section twenty-two), the number of ballots delivered to voters, the number of spoiled ballots and the number of ballots not delivered to voters and the number of ballots returned, identifying and specifying the same; and all unused ballots, spoiled ballots and stubs of ballots voted shall be returned with such statement. Any election officer who shall fail to thus account fully and particularly for all official ballots placed in his charge, shall be deemed guilty of a misdemeanor.

[Section 22 referred to is section 2244.]

Legislation. Sec. 2262. Act 1891 § 27, cited under § 2145.

2263. Count of votes.

SEC. 128. As soon as the polls at any election shall have finally closed, the judges shall immediately open the ballot box and proceed to count the votes polled, and the counting thereof shall be commenced and continued until finished before the judges and clerks shall adjourn. They shall first count the number of ballots in the box. If the ballots shall be found to exceed the number of names entered on each of the poll lists, the judges of election shall then examine the official endorsements upon the outside of the ballots without opening the same, and if, in the unanimous opinion of the judges, any one or more of the ballots in excess of the number on the poll lists be deemed not to bear the proper official endorsement, it or they shall be put into a separate pile by themselves, and a separate record and return of the votes in such ballots shall be made under the head of "Excess Ballots." When the ballots and the poll lists agree, or, as above provided, have been made to agree, the board shall proceed to count the votes; each ballot shall be read and counted separately, and every name included in a marked set or list of nominations, or separately marked as voted for on such ballot, where there is no conflict to obscure the intention of the voter, as aforesaid, shall be read and marked upon the tally list, before any other ballot is proceeded with; and the entire number of ballots, excepting "Excess Ballots," shall be read and counted and placed upon the tally lists in like manner, and when all of the ballots, excepting "Excess Ballots," if any, have been counted as herein provided, the board shall estimate and publish the votes.

Legislation. Sec. 2263. Act 1891 § 31, cited under § 2145.
G. L. § 974 read:

Sec. 49. As soon as the polls at any election shall have finally closed, the judges shall immediately open the ballot box and proceed to canvass the votes polled. They shall first count the number of ballots in the box; if the ballots shall be found to exceed the number of names entered on each of the poll lists, the numbers upon the ballots shall be examined without opening the ballots, and if it be found those in excess of the total number on the poll lists be not numbered, they shall be destroyed; if it be found that there is more than one ballot having the same number, the ballots having the same numbers shall be replaced in the box and shaken up, and one of the judges shall publicly draw out and destroy all but one of said ballots. When the ballots and the poll lists agree, or as above provided have been

made to agree, the board shall proceed to count and estimate and publish the votes.

It was amended by Act 1883 p. 184 § 4, G. S. § 1198.

R. S. p. 294 § 46 was a similar enactment.

CITATIONS.

This section cited in holding that if the intention of the voter can be ascertained from the marks, the ballot should be counted.—*Nicholls v. Barrick*, 27 C. 437, 62 P. 204.

2264. Clerks keep tally lists.

SEC. 129. As the judges of election shall open and read the tickets, each clerk shall, upon tally lists prepared for that purpose, carefully mark down the votes each of the candidates shall have received, in separate lines, with the name of such candidate at the end of the line, and the office it is designed by the voter such candidate shall fill.

Legislation. Sec. 2264. Act 1891 § 32, cited under § 2145.

G. L. § 975, G. S. § 1199 read:

Sec. 50. As the judges of election shall open and read the tickets, each clerk shall, upon tally lists prepared for the purpose, carefully mark down the votes each candidate shall have received in separate lines, with the name of such candidate at the end of the line, and the office it is designed by the voters such candidate shall fill; but if on such canvassing two or more tickets shall be found deceitfully folded together, such tickets shall be rejected.

CITATIONS.

In canvassing returns where there is a discrepancy between the tally list and the certificate the latter controls.—*Peo. v. Tool*, 35 C. 249, 86 P. 232.

2265. Imperfect or defective ballots.

SEC. 130. If a voter marks in ink more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the choice of any voter for any office to be filled, his ballot shall not be counted for such office. *Provided, however,* A defective or an incomplete cross marked on any ballot in ink, in a proper place, shall be counted if there be no other mark or cross in ink on such ballot indicating an intention to vote for some person or persons or set of nominations, other than those

indicated by the first mentioned defective cross or mark, and **wh** a cross is marked in ink against a device indicating a **vote** the entire set of candidates, and also another cross in ink **agai** one or more names in another list, such ballot shall only be **h** invalid as to any office so doubly marked. No ballot **without** 1 official endorsement shall, except as provided in section **twen** two of this act, be allowed to be deposited in the ballot box, **a** none but ballots provided in accordance with the **provisions** this act shall be counted. Ballots not counted shall be **mark** "Defective" on the back thereof, and shall be preserved until **tl** next general election, when the same shall be destroyed by **fi** by the clerk having the custody thereof

[Section 22 above referred to is section 2244.]

Legislation. Sec. 2265. Act 1891 § 29, cited under § 2145.

CITATIONS.

If the choice of the voter can be determined the vote *mus* be counted. Marking the ballots to the left instead of to the right—*Young v. Simpson*, 21 C. 462, 42 P. 666.

Voting a "straight fusion ticket" though no such party named clearly showed the intention of the voter.—*Nicholls v. Barrick* 27 C. 437, 62 P. 204.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

2266. Marking imperfectly names of candidates voted for.

SEC. 131. If an imperfect cross or mark be found near the name of a candidate in ink, which mark appears to have been made with intent to designate the candidate so marked as the one voted for, such ballot shall not be rejected, if the intent of the voter to designate the person for whom he intended to vote can be reasonably gathered therefrom; *Provided*, That if marks placed opposite the names of individual candidates shall work to a complete exclusion of the candidates of the party, the designation of which has been written in at the top of the ballot, and the intention of the voter is clear, it shall not be necessary to strike out the names of the candidates against whom it is desired to vote.

[Penalty for violation of above. Section 2269.]

Legislation. Sec. 2266. Act 1901 p. 172 § 3, cited under § 2218.

CITATIONS.

This and other sections cited in considering ballots irregularly marked and where another's name was written in the blank space.—*Baldwin v. Wade* (March 1911), 114 P. 399.

2267. Judges' certificate—Form—Signature—Sealing—Returning—Penalty.

SEC. 132. As soon as all the votes shall have been read off and counted, the judges of election shall make out a certificate under their hands, and attested by the clerks, stating the number of votes each candidate received, designating the office for which such person received such vote or votes, and the number he did receive, the number being expressed in words at full length, and in numerical figures, such entry to be made as nearly as circumstances will admit, in the following form, to-wit: At an election held at the house of....., in..... precinct or ward, in the county of..... and state of Colorado, on the day of, in the year of our Lord one thousand nine hundred and, the following-named persons received the number of votes annexed to their respective names for the following described offices, to-wit: Whole number of votes cast were A. B. had seventy-two (72) votes for governor; C. D. had seventy-one (71) votes for governor; E. F. had seventy-two (72) votes for lieutenant-governor; G. H. had sixty-nine (69) votes for lieutenant-governor; J. K. had sixty-eight (68) votes for representative in congress; L. M. had seventy (70) votes for representative in congress; N. O. had seventy-two (72) votes for representative; P. Q. had seventy-one (71) votes for representative; R. S. had eighty-four (84) votes for sheriff; T. W. had sixty (60) votes for sheriff: and in the same manner for any other persons voted for.

Certified by us:

Attest:

G. H. } Clerks of
I. J. } Election.

A. B. } Judges
C. D. } of
E. F. } Election.

And the said certificate, together with one of the lists of voters, and one of the tally papers, shall then be enclosed and sealed up, under cover, and directed to the clerk of the county in which such election is held, and the pocket thus sealed shall be sent by registered letter, where practicable, otherwise it shall be conveyed by one of the judges or clerks of the election, to be determined by lot if they can not agree otherwise, within six days of the closing of the polls. And if any judge or clerk of an election, after having been deputed by the judges of election, at which he served as judge or clerk, to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, save, with the seal unbroken, he shall for every offense forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt in any court of competent jurisdiction; *Provided*. That informality in the delivering of the poll books as directed in this section shall not invalidate the vote of any precinct when said poll books shall have been delivered previous to the canvassing of the votes of such election by the county board of canvassers.* When all the votes shall have been read and counted, the ballots, together with one of the tally lists, shall be returned to the ballot box and the opening in the glass part thereof shall be carefully sealed, and each of the judges shall place his private mark on said seal, the wooden cover shall then be locked and each of the judges shall preserve one of the keys thereof as herein provided. This box shall then be delivered by one of the clerks of the election who is of the opposite political party from the judge or clerk chosen to take charge of and deliver the certificate and tally list, which clerk shall at once and with all convenient speed take said box to the office of the county clerk and recorder and safely deliver it to such officer, taking his delivery receipt therefor.

Legislation. Sec. 2267. Act 1883 p. 184 § 5. G. S. § 1200, amending G. L. § 976. The amendment added all that follows the star.

The form of the certificate under the territory is found in R. S. p. 289 § 30.

CITATIONS.

Mere irregularities in returning the ballots and poll lists in the absence of fraud will not necessarily vitiate the returns.—*Kellogg v. Hickman*, 12 C. 264, 21 P. 328.

In canvassing the returns where there is a discrepancy between the tally list and the certificate, the latter controls.—*Peo. v. Tool*, 35 C. 249, 86 P. 232.

This section referred to in determining the proper officials to canvass the returns of an election for members of the Denver Charter Convention.—*McMurray v. Wright*, 19 A. 18, 73 P. 258.

2268. Watchers.

SEC. 133. Each of the two political parties casting the highest vote for the principal officer to be chosen at the last general election, shall have the right to appoint in each precinct one person, a bona fide member of such party, and a resident of the precinct, to remain within the polling place, as a watcher, during the casting and counting of votes, and the declaration of the result thereof. Such watcher may also act as challenger, when there is reason to believe that any person about to vote is not entitled to vote in that precinct. No one who is the employer, agent, manager, superintendent or boss of a number of employees of any company, corporation, or person, carrying on mining, manufacturing or railroad operations in such precinct, shall be appointed such watcher, and each watcher shall have the right to select and have present, during the counting of the votes, three registered voters of the precinct.

[Watchers and challengers, see section 2213.]

Legislation. Sec. 2268. Act 1901 p. 172 § 2, cited under § 2218.

2269. Penalty for interference with watcher.

SEC. 134. If any person shall interfere with any watcher herein provided for while he is in the discharge of his duties, then such person so interfering shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than three hundred (300) dollars. Justices of the peace shall have jurisdic-

tion of actions brought for a violation of this act, subject to the right of appeal as provided for in cases of assault and battery.

[The act above referred to comprises sections 2218, 2266, 2268 and 2269.]

[For appeals from justice court see section 3869.]

[See also sections 2209 and 2213.]

Legislation. Sec. 2269. Act 1901 § 4, cited under § 2218.

2270. Judges designate and appoint constables.

SEC. 135. For the preservation of order, as well as the securing of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables residing within the precinct, who shall be designated for the purpose by the judges of the election, to attend to all elections within his precinct, and the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the elections and until the votes are canvassed.

Legislation. Sec. 2270. G. L. § 970. G. S. § 1194.

R. S. p. 289 § 29 was a similar enactment.

CITATIONS.

An agreement between county officers and the committees of the political parties that only one deputy and one constable should be allowed at each voting precinct was without authority of law.—*Warford v. Peo.*, 41 C. 207, 92 P. 25.

2271. Fees of constables—Special constables.

SEC. 136. Constables or special constables appointed or requested by the judges of election to preserve peace at the polls, shall each receive two dollars and a half per day for their services, payable out of the county treasury.

Legislation. Sec 2271. G. L. § 971. G. S. § 1195.

J. CANVASS OF VOTES.

Section.

- 2272. County clerk open returns and abstract votes—Ties.
 - 2273. Fees of justice of peace in canvassing votes.
 - 2274. Certified copy of abstract filed with secretary of state.
 - 2275. Deputy clerk act, when.
 - 2276. Vote for state officers—Abstract sent to speaker—Canvass by general assembly—Tie—Joint ballot.
 - 2277. State board of canvassers canvass votes.
 - 2278. Failure of returns, secretary of state send messenger—Pay.
 - 2279. Meeting of state board of canvassers.
 - 2280. State canvassers—Statement—Certificate.
 - 2281. Tie—Lots cast—Notice to candidates.
 - 2282. Secretary of state record and publish statement of canvassers.
 - 2283. Secretary of state furnish lists of members of general assembly.
 - 2284. Secretary of state prepare list of presidential electors.
 - 2285. Imperfect ballots and returns, when counted.
 - 2286. Correction of clerical errors—Adjournments of board.
-

2272. County clerk opens returns and abstract votes—Ties.

SEC. 137. On the tenth day after the close of the election, or sooner, if all the returns be received, the clerk of the county, taking to his assistance two justices of the peace of his county, one at least of whom shall belong to a different political party than himself, if any such there be in the county, shall proceed to open the said returns, and make abstracts of the votes in the following manner: The abstract of votes for electors for president and vice-president of the United States shall be on one sheet, and the abstract of votes for representatives in congress shall be on another sheet, and the abstract of votes for regents of the university shall be on another sheet, and the votes for officers of the executive department shall be on another sheet, and the abstract of votes for senators shall be on another sheet, and the abstract of votes for representatives shall be on another sheet, and the abstract of votes for judges of the supreme court shall be on another sheet, and the abstract of votes for judges of the district court and district attorneys shall be on another sheet, and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the said clerk of the

county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher number than any other person, the county clerk and his assistants aforesaid shall immediately determine by lot which of the two candidates shall be elected.

Legislation. Sec. 2272. G. L. § 978. G. S. § 1202.
R. S. p. 290 § 32 was the territorial act of like terms.

CITATIONS.

In a county seat election case held that the powers of canvassers are ministerial and the regularity of their proceedings may be inquired into by mandamus.—*Peo. v. Grand County*, 6 C. 209.

Where the supreme court found that neither candidate received a majority, the right to office was required to be settled in a manner provided by this section.—*Young v. Simpson*, 21 C. 465, 42 P. 668.

The fact that the county clerk was a candidate for re-election did not disqualify him to act as a member of the canvassing board.—*Kindel v. Le Bert*, 23 C. 397, 48 P. 646.

This section referred to in an election contest case.—*Nicholls v. Barrick*, 27 C. 436, 62 P. 203.

This section cited in a dissenting opinion as to the nullity of a certificate of election issued by the election commission created by the Denver charter.—*Peo. v. Horan*, 34 C. 330, 86 P. 261.

Where the supreme court assumed jurisdiction to supervise an election, it could effectuate its orders by restraining the election commission from canvassing the returns from precincts where frauds were committed.—*Peo. v. Tool*, 35 C. 227, 247, 86 P. 229.

Where there is a discrepancy between the tally list and the certificate the certificate controls and can not be changed by the canvassers by reference to the tally list.—*Id.* 250.

The duties of the canvassers are purely ministerial where there is but one set of returns. The board may be compelled by mandamus to reconvene for the purpose of making the canvass and to issue a certificate in accordance therewith whenever it appears that it has failed to do so.—*Lehman v. Pettingell*, 39 C. 258, 263, 89 P. 48.

CITATIONS CONTINUED

The canvass of the returns of an election for members of the Denver Charter Convention was under this section.—*McMurray v. Wright*, 19 A. 18, 73 P. 258.

2273. Fees of justice of peace in canvassing votes.

SEC. 138. Every justice of the peace called to assist the county clerk of any county in opening the returns of any election, and making abstracts of the votes cast thereat, as is required by law, shall be allowed and receive for such services the sum of five dollars for each day in which he is actually engaged therein, to be paid by the county in which such service is rendered.

Legislation. Sec. 2273. § 1 Act 1889 p. 222, entitled:

AN ACT

To Allow Fees to the Justices of the Peace for Assisting County Clerks in Opening the Returns of Elections, and Making Abstracts of the Votes Cast Thereat.

2274. Certified copy of abstract filed with secretary of state.

SEC. 139. The clerk of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstract and deliver or transmit the same in a registered package by mail to the office of the secretary of state; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies, and affix thereto the county seal, and the said clerk shall respectively endorse on the back of the envelope in which the said certified copies are enclosed: "Certified copy of the abstract of votes cast for governor, etc., members of the general assembly, etc. (as the case may be), cast at the regular election in county, 19...."

Legislation. Sec. 2274. G. L. § 979. G. S. § 1203.

Framed on R. S. p. 291 § 34.

2275. Deputy clerk act—When.

SEC. 140. Whenever it shall so happen that the county clerk shall die, be absent, or from any casualty be prevented from open-

ing the returns of votes at any election, it shall be lawful for his deputy to discharge the duties required of such clerk by law; which deputy shall be appointed by the majority of the county commissioners when said clerk has failed to appoint a deputy.

Legislation. Sec. 2275. G. L. § 980. G. S. § 1204.

**2276. Votes for state officers—Abstract sent to speaker—
Canvass by general assembly—Tie—Joint ballot.**

SEC. 141. The abstract of votes cast in each county for the officers of the executive department shall be sealed up by the county clerks of said counties, and delivered or transmitted in a registered package by mail to the secretary of state, directed to the speaker of the house of representatives. Upon the organization of the house the secretary of state shall deliver to the speaker of the house all of the returns for officers of the executive department that he shall have received, and upon the receipt of the same by the speaker of the house of representatives he shall, before proceeding to other business, open and publish the same in the presence of a majority of the members of both houses of the general assembly, who shall for that purpose assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected by the presiding officer of the joint assembly, but if two or more have an equal and the highest number of votes for the same office, one of them shall be chosen thereto by the two houses on joint ballot.

Legislation. Sec. 2276. G. L. § 981. G. S. § 1205.

STATE BOARD OF CANVASSERS.

2277. State board of canvassers canvass votes.

SEC. 142. The governor, secretary of state, auditor of state, treasurer of state and attorney-general, or any three of them, shall constitute the board of state canvassers, and shall canvass the abstracts of votes cast in the different counties of the state for electors of president and vice-president, for representatives in congress, for regents of the university, for judges of the supreme

and district courts, for district attorneys, and for senators and representatives.

Legislation. Sec. 2277. G. L. § 982. G. S. § 1206.

The composition and duties of the territorial board of canvassers are stated in R. S. p. 291 § 36.

CITATIONS.

The duties of the state board of canvassers are purely political and governmental, and the courts have no jurisdiction to control its action therein by mandamus.—*Orman v. Peo.*, 18 A. 306, 71 P. 430.

2278. Failure of returns, secretary of state send messenger—Pay.

SEC. 143. If from any county no such abstract of votes shall have been received within the twenty-five days next after any election, by the secretary of state, he shall dispatch a special messenger to obtain a copy of the same from the county clerk of such county, and such county clerk shall immediately on demand of such messenger make out and deliver to him the copy required, which copy of the abstract of votes the messenger shall deliver to the secretary of state without delay. The said messenger shall receive as compensation for his services three dollars per day, and fifteen cents for each mile traveled in going to and returning from the county seat of said county, by the usual route, to be paid out of the state treasury.

Legislation. Sec. 2278. G. L. § 983. G. S. § 1207.

Framed on R. S. p. 291 § 35.

2279. Meeting of state board of canvassers.

SEC. 144. For the purpose of canvassing the result of elections, the state board of canvassers shall meet at the office of the secretary of state at ten o'clock of the forenoon of the twenty-fifth day after any election for any of the officers mentioned in section fifty-three (53) of this act, if it be not on Sunday; if it be on Sunday, then they shall meet on the twenty-sixth day, when they shall, if the returns from all the counties of the state be in the possession of the secretary of state, proceed to canvass the votes. If the re-

turns are not all in they shall adjourn from time to time, as they deem proper, to await the receipt of all returns; *Provided, however*, That on the last Wednesday of December, next after the election. they shall canvass the votes whether all the returns be received or not; *And also provided*, That on the year upon which there is elected electors of president and vice-president, the state board of canvassers shall meet at the secretary of state's office on the last secular day of November, in the year of the election, and proceed to canvass the votes cast for said electors.

[Board may return statement to county or precinct board for correction, section 2286.]

[Section 53 above referred to is section 2272.]

Legislation. Sec. 2279. G. L. § 984. G. S. § 1208.

2280. State canvassers—Statement—Certificate.

SEC. 145. The state board of canvassers, when met in accordance with the law, and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all of the officers mentioned in section fifty-three (53) of this act that shall have been voted for in said election; which statements shall show the names of the persons to whom such votes shall have been given for either of said offices, and the whole number given to each, distinguishing the several districts and counties in which they were given; they shall certify such statements to be correct and subscribe their names thereto, and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices, or either of them, and shall endorse and subscribe on such statements a certificate of their determination and deliver them to the secretary of state.

[Section 53 above referred to is section 2272.]

Legislation. Sec. 2280. G. L. § 985. G. S. § 1209.

2281. Tie—Lots cast—Notice to candidates.

SEC. 146. If any two or more persons have an equal and the highest number of votes for member of either house of the general assembly, for judge of the supreme or district courts, for district attorney, or for regent of the university, or electors of

president and vice-president, the state canvassers shall proceed to determine by lot which of the candidates shall be declared elected. Reasonable notice shall be given to such candidates of the time when such election will be so determined.

Legislation. Sec. 2881. G. L. § 986. G. S. § 1210.

In case of tie vote, R. S. p. 291 § 36 required a special election
Act of 1874 p. 132 was a special Act on the matter of tie votes.

2282. Secretary of state record and publish statement of canvassers.

SEC. 147. The secretary of state shall record in his office in a book to be kept by him for that purpose each certified statement and determination, as made by the board of state canvassers, and shall without delay make out and transmit to each of the persons thereby declared to be elected, a certificate of his election, certified by him under his seal of office; and he shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper published at the seat of government.

Legislation. Sec. 2282. G. L. § 987. G. S. § 1211.

2283. Secretary of state furnish list of members of general assembly.

SEC. 148. Upon the day fixed by law for the assembling of the general assembly the secretary of state shall lay before each house a list of the members elected thereto, with the districts they represent, in accordance with the returns in his office.

Legislation. Sec. 2283. G. L. § 988. G. S. § 1212.

2284. Secretary of state prepare lists of presidential electors.

SEC. 149. The secretary of state shall prepare lists of the names of the electors of president and vice-president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one of such certificates thus signed to each of said electors, on or before the first Wednesday in December next after such election.

Legislation. Sec. 2284. G. L. § 989. G. S. § 1213.

CORRECTION OF ERRORS.**2285. Imperfect ballots and returns when counted.**

SEC. 150. Whenever the judges of election in any precinct or ward discover in the canvassing of votes that the name of any candidate voted for be misspelled, or the initial letters of his Christian name or names be transposed or omitted in part or altogether on the ballot, the vote or votes for such candidate shall be counted for him if the intention of the elector to vote for him be apparent; and whenever the board of county canvassers or of state canvassers, or the speaker of the house of representatives, when authorized by law to canvass votes or returns, shall find the returns from any precinct, ward, county or district (as the case may be) do not strictly conform to the requirements of law in the making, certifying and returning the same, the votes polled in such precinct, ward, county or district shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or persons authorized to canvass votes and returns, to determine therefrom how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

Legislation. Sec. 2285. G. L. § 992. G. S. § 1216.

2286. Correction of clerical errors—Adjournments of board.

SEC. 151. If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose) to the precinct or ward judges, or to the county board of canvassers (as the case may be) from whom they were received, to have the same corrected, and the judges of election or county clerk (as the case may be), when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the canvassing board may adjourn from day

to day for the purpose of obtaining and receiving such statement; *Provided, always*, That they shall not delay counting past the day provided by law for the completion of the canvass.

Legislation. Sec. 2286. G. L. § 993. G. S. § 1217.

CITATIONS.

This section cited in holding that in case of a discrepancy between the tally lists and the returns the latter control.—*Peo. v. Tool*, 35 C. 260, 86 P. 232.

K. CONTEST OF ELECTIONS.

1. Presidential Elector, Supreme, District and County Judge.—2287-2293.
2. State Officers.—2294-2297.
3. Senators and Representatives.—2298-2307.
4. County Officers.—2308-2319.

1. PRESIDENTIAL ELECTOR, SUPREME, DISTRICT AND COUNTY JUDGE.

Section.

2287. Any elector may institute contest.
2288. Supreme court jurisdiction.
2289. District court jurisdiction.
2290. District court jurisdiction of county judge contest.
2291. Proceedings in district court.
2292. Changes of venue.
2293. Appeals.

2287. Any elector may institute contest.

SEC. 152. Any qualified elector may institute proceedings to contest the election of any person to the office of presidential elector, or to the office of supreme, district or county judge.

Legislation. Sec. 2287. Act. 1893 p. 242 § 1, entitled:

AN ACT

Relating to Contested Elections for the Offices of Presidential Electors, and of Supreme, District and County Judges, and to Repeal Section One Thousand Two Hundred Thirty-one, of the General Statutes of 1883.

The repealed G. S. § 1231 mentioned in the title, same as G. L. § 1007, did not provide for contest of office of presidential elector.

2288. Supreme court jurisdiction.

SEC. 153. The supreme court, or any two or more judges thereof in vacation, shall have original jurisdiction for the adjudication of such contests for the office of presidential elector, and for the office of judge of the supreme court, and shall prescribe rules for practice and proceedings therein; *Provided, That* no judge of said court who is a contestant or contestee in such election shall be permitted to hear and determine the same.

Legislation. Sec. 2288. Act 1893 § 2, cited under 2287.

2289. District court jurisdiction.

SEC. 154. The district court of the district wherein the contest for the office of district judge arises, or the judge thereof in vacation, shall have jurisdiction for the adjudication of contests over the office of district judge. *Provided, That* should the district judge of such district be himself contestor or contestee in such election, then such contested election shall be heard and determined before the district court of an adjoining judicial district, or the judge thereof in vacation, whose place of residence is nearest to the residence of the contestee.

Legislation. Sec. 2289. Act 1893 § 3, cited under § 2287.

2290. District court jurisdiction of county judge contest.

SEC. 155. The district court, or the judge thereof in vacation, shall have jurisdiction for the adjudication of all contests for the office of county judge arising in any of the counties of that district.

Legislation. Sec. 2290. Act 1893 § 4, cited under § 2287.

2291. Proceedings in district court.

SEC. 156. All contests before such district courts, or any judge thereof in vacation, shall be conducted as near as may be according to the rules for practice and proceedings therein pre-

scribed by the supreme court for contested elections in such supreme court, or, the supreme court may prescribe rules for practice and proceedings in contested elections before district courts or the judges thereof in vacation. All judges in vacation shall have the same power to issue summonses, attachments and other process, and to render and make effective their judgments and decisions, the same as such courts would have.

Legislation. Sec. 2291. Act 1893 § 5, cited under § 2287.

2292. Changes of venue.

SEC. 157. Change of venue may be taken from any district court, or the judge thereof in vacation, for any cause in which changes of venue might be taken in civil or criminal actions.

[For change of venue see Code, sections 31 and 32; and Chapter 153, Venue.]

Legislation. Sec. 2292. Act 1893 § 6, cited under § 2287.

2293. Appeals.

SEC. 158. Appeals shall lie to the supreme court from the decisions of any district courts or any judges thereof in vacation, which appeals may be taken in the same manner and under the same conditions as appeals are taken from judgments of the district court in civil actions.

[See Code, section 422, for allowance of appeal.]

Legislation. Sec. 2293. Act 1893 § 7, cited under § 2287.

2. STATE OFFICERS.

Section.

2294. Who may contest—Notice.

2295. General assembly meet—Notice of contest.

2296. Evidence—Depositions.

2297. Rules in conducting contests.

2294. Who may contest—Notice.

SEC. 159. Any candidate or elector being desirous of contesting the election of any person declared elected governor, lieutenant-

governor, secretary of state, auditor of state, treasurer of state, attorney-general, superintendent of public instruction, or regent of the university, shall between the sixth and tenth days of the first session of the general assembly, after the day of election, file a notice of such intention with the secretary of the senate, specifying the particular points on which he means to rely.

Legislation. Sec. 2294. G. L. § 1008. G. S. § 1232.

Election contests under the territory were provided for by Act of 1861 p. 47, amended 1862 p. 65 and reprinted as R. S. p. 294 §§ 50-56.

CITATIONS.

In a contest for the office of governor, the general assembly has no legal authority to adopt a resolution declaring that no person was elected governor and that a vacancy exists in the office.—*Senate Resolution, In re*, 33 C. 314, 79 P. 1011.

Sections 2294 to 2297 cited as prescribing the manner of initiating the contest, the various steps to be taken and the rules to be observed in conducting the contest.—*Id.*

2295. General assembly meet—Notice of contest.

SEC. 160. Upon any such notice being filed, as aforesaid, the general assembly shall, by resolution, determine on what day they will meet in joint convention to take action in any such contest, and thereupon a certified copy of the notice filed by any contestor shall be served upon the person whose election is sought to be contested, or by leaving a copy thereof at his last or usual place of residence by such person as shall by resolution be appointed, with a notice that he is required to attend the joint convention on the day so fixed to answer the contest.

Legislation. Sec. 2295. G. L. § 1009. G. S. § 1233.

2296. Evidence—Depositions.

SEC. 161. On the hearing of any contested election for any of the offices named in section eighty-three of this act the parties to such contest may introduce written testimony to be taken in manner to be prescribed by the joint convention; but no depositions

shall be read on such hearing unless the opposite party shall have had reasonable notice of the time and place of taking the same.

[Section 83 referred to is section 2294.]

Legislation. Sec. 2296. G. L. § 1010. G. S. § 1234.

2297. Rules in conducting contests.

SEC. 162. In conducting any contested election for officers named in section eighty-three of this act, the following rules shall be observed, to wit:

First—On the day and at the hour appointed for that purpose the general assembly, with its proper officers, shall convene in joint convention.

Second—The president of the senate shall preside, but when he is the contestee, the president pro tem. of the senate shall preside.

Third—The parties to the contest shall then be called by the secretary of the senate, and, if they answer, their appearance shall be recorded.

Fourth—The contestor shall first introduce his testimony, and then the contestee shall introduce his; and, after the testimony is gone through on both sides, the contestor may, by himself or by his counsel, open the argument, and the contestee may then proceed, by himself or by his counsel, to make his defense, and the contestor be heard in reply.

Fifth—After the arguments are thus gone through by the parties, any member of the joint convention shall be at liberty to offer his reasons for the vote he intends to give; *Provided*, That the convention may limit the time of argument and debate.

Sixth—The secretary of the senate shall keep a regular journal of the proceedings. The manner of taking the decision shall be by a call of the members, and a majority of all the votes given shall decide.

[Section 83 above referred to is section 2294.]

Legislation. Sec. 2297. G. L. § 1011. G. S. § 1235.

3. SENATORS AND REPRESENTATIVES.

Section.

- 2298. Who may contest.
- 2299. Contestor file statement and serve notice.
- 2300. Contestee shall file answer.
- 2301. Contestor shall file reply.
- 2302. Either party may serve notice of taking depositions.
- 2303. Testimony in rebuttal may be taken.
- 2304. Time of taking depositions—Trial.
- 2305. Who may take depositions—Witnesses.
- 2306. Depositions to be certified and sent to secretary of state.
- 2307. Secretary of state transmit contest papers to presiding officer.

2298. Who may contest.

SEC. 163. The election of any person declared duly elected as a senator or a member of the house of representatives may be contested by any qualified voter of the district to be represented by such senator or representative.

Legislation. Sec. 2298. Act 1885 p. 193 § 1, entitled:

AN ACT

Regulating Proceedings in Certain Contested Election Cases, and to Repeal Sections Eighty-seven to One Hundred and Nine, Inclusive, of Chapter Thirty-four, of the General Statutes of 1883.

The repealed sections mentioned in the title, G. S. §§ 1236-1258, G. L. §§ 1012-1034, were those sections of the election law of 1877 which provided for contested elections, and had supplanted the territorial act cited under § 2294.

CITATIONS.

An election contest is a summary proceeding not in accordance with the course of the common law.—*Hadley v. Fish*, 3 C. 52, *Schwarz v. County Court*, 14 C. 47, 23 P. 85.

In an election contest under this act the qualifications of voters is fully discussed.—*Kellogg v. Hickman*, 12 C. 257, 21 P. 326.

In an election contest the statement must bring the case within some one of the grounds stated in this section.—*Lewis v. Boynton*, 25 C. 490, 55 P. 733.

A change of venue on the ground of prejudice is not a matter of right, but is in the discretion of the judge.—*Nordloh v. Packard*, 45 C. 519, 101 P. 789.

2299. Contestor file statement and serve notice.

SEC. 164. The contestor shall, within ten days after the canvass of the votes, make and file in the office of the secretary of state a verified statement, as hereinafter required, in relation to county officers, except the list of illegal votes cast or legal votes rejected, and serve a copy thereof upon the contestee.

Legislation. Sec. 2299. Act 1885 § 2, cited under § 2298.

2300. Contestee shall file answer.

SEC. 165. The contestee shall, within ten days after the service upon him of such statement, make and file in the office of the secretary of state an answer, duly verified, admitting or specifically denying each allegation contained in such statement intended to be controverted by contestee, and shall also set up in such answer any new matter or counter statement embracing any of the causes hereinafter enumerated as causes of contest in relation to county officers, except the list of illegal votes cast or legal votes rejected, which may entitle him to retain his seat in that branch of the general assembly to which he shall have been declared duly elected, and serve a copy thereof upon the contestor.

Legislation. Sec. 2300. Act 1885 § 3, cited under § 2298.

2301. Contestor shall file reply.

SEC. 166. When the answer of contestee contains new matter constituting a counter statement, the contestor shall, within ten days after the service upon him of such answer, reply to the same, admitting or specifically denying under oath, each allegation contained in such counter statement intended by him to be controverted on the trial, and file the same in the office aforesaid, and serve a copy thereof upon the contestee.

Legislation. Sec. 2301. Act. 1885 § 4, cited under § 2298.

2302. Either party may serve notice of taking depositions.

SEC. 167. Either party, contestor or contestee, may, at the time of serving his statement or answer, serve upon the adverse party a notice of taking depositions in support of his statement

or answer, if any such depositions are to be taken, to be used upon the trial of such contest. That, immediately after joining issue of fact, as hereinbefore provided, both contestor and contestee shall proceed with all reasonable dispatch to take such depositions as he may desire to use on such trial. That written notice of the time and place of taking such depositions shall be given to the adverse party a sufficient length of time to enable such party to reach such place within the time, by the usual traveled route and upon a public conveyance, if any such conveyance plies between the place of serving such notice and the place of taking such depositions; otherwise, a reasonable time to make such journey; *Provided*, That nothing herein contained shall abridge the right of either party to take depositions upon reasonable notice prior to the joining of issue aforesaid in relation to any of the matters of controversy to be raised in such contest; but a failure to take depositions before the joining of issue shall not be held as laches against either party to such contest.

Legislation. Sec. 2302. Act 1885 § 5, cited under § 2298.

2303. Testimony in rebuttal may be taken.

SEC. 168. If, upon the completion of taking any deposition, the adverse party has any witness or witnesses present before the officer taking such deposition whose testimony is sought to be used in rebuttal of the depositions so taken, such adverse party may proceed immediately to take the deposition of such rebutting witness or witnesses before such officer, upon giving written notice to the opposite party or his attorney; and such officer shall attach to said depositions a copy of said notice, with proof of service; the said rebutting depositions shall be returned by the officer taking the same, in the same manner as hereinafter provided for returning depositions in chief; *Provided, always*, That such adverse party shall be at his own proper cost and expense in procuring such depositions and the return thereof.

Legislation. Sec. 2303. Act 1885 § 6, cited under § 2298.

2304. Time of taking depositions—Trial.

SEC. 169. The time for taking depositions, by either party,

to be used upon the trial of such contest, shall expire three days prior to the meeting of the next general assembly. Both parties may take depositions at the same time, but neither party shall take depositions at two or more different places at the same time. Both parties must be ready, with all their testimony, to proceed with the trial of such contest, when called for trial by the body authorized to try the same; but nothing herein contained shall be construed to abridge the right of either branch of the general assembly, upon good cause shown, to extend the time to take depositions, or to send for and examine any witness, or to take any testimony it may desire to use on the trial of such contest.

Legislation. Sec. 2304. Act 1885 § 7, cited under § 2298.

2305. Who may take depositions—Witnesses.

SEC. 170. Any county judge, or justice of the peace, or notary public, of a county in the district where the contest arises, may issue subpoenas in every such contested election case, and shall have power to compel the attendance of witnesses, take such depositions, and certify the same, according to the rules for taking depositions in the district court.

[For taking depositions see Code, Chapter 34.]

Legislation. Sec. 2305. Act 1885 § 8, cited under § 2298.

2306. Depositions to be certified and sent to secretary of state.

SEC. 171. The officer before whom such depositions shall be taken shall immediately, upon the conclusion of the taking thereof, certify to the same, and enclose the same, together with the notices for taking such depositions, and the proof of service of such notices, in an envelope, and seal the same up, and transmit the same by mail, or by the hands of a sworn officer, to the secretary of state, with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before which the contest is to be tried.

Legislation. Sec. 2306. Act 1885 § 9, cited under § 2298.

2307. Secretary of state transmit contest papers to presiding officer.

SEC. 172. The secretary of state shall deliver the same, unopened, together with the statement of contestor, answer of contestee, and reply, if any there be to the presiding officer of the body in which the contest is to be tried, immediately upon the organization of such body, or so soon thereafter as the same may come to his possession; and such presiding officer shall, immediately upon the receipt thereof, give notice to the body over which he presides that such papers are in his possession.

Legislation. Sec. 2307. Act 1885 § 10, cited under § 2298.

4. COUNTY OFFICERS.**Section.**

- 2308. Who may contest—Causes of contest.
 - 2309. Causes insufficient to set aside election.
 - 2310. County judge try contests—Bond of contestor.
 - 2311. Contestor file statement—Contents.
 - 2312. Issuance and service of summons—Answer of contestee.
 - 2313. Contestor shall file reply.
 - 2314. Time of trial—Testimony—Depositions—Appeals.
 - 2315. Procedure same as in county court—Evidence not used against witness.
 - 2316. Examination of poll book and ballot box—Recount of votes.
 - 2317. Judgment.
 - 2318. Costs.
 - 2319. Contest of town and precinct election—No appeal.
-

2308. Who may contest—Causes of contest.

SEC. 173. The election of any person, declared duly elected to any county office, except the office of county judge, may be contested by any elector of such county.

First—When the contestee is not eligible to the office to which he has been declared elected.

Second—When illegal votes have been received, or legal votes rejected, at the polls, sufficient to change the result.

Third—For any error, or mistake, in any of the boards of

judges, or canvassers, in counting or declaring the result of the election, if the error, or mistake, would affect the result.

Fourth—For mal-conduct, fraud, or corruption on the part of the board of registry, or judges of election, in any precinct, or ward, or any of the boards of canvassers, or on the part of any member of such boards.

Fifth—For any other cause (though not above enumerated), which shows that another was the legally elected person.

Legislation. Sec. 2308. Act 1885 § 11, cited under § 2298.

2309. Causes insufficient to set aside election.

SEC. 174. The matter contained in the second, third, fourth and fifth causes of contest shall not be held sufficient to set aside the election, unless such causes be found sufficient to change the results.

Legislation. Sec. 2309. Act 1885 § 12, cited under § 2298.

2310. County judge try contests—Bond of contestor.

SEC. 175. All contested election cases of county officers, except county judges, shall be tried and determined by the county judge of the county in which the contest arises; but before the county judge shall be required to take jurisdiction of the contest, the contestor must file, with the clerk of said court, a bond, with sureties, to be approved by said judge, running to said contestee, and conditioned to pay all costs in case of failure to maintain his contest.

Legislation. Sec. 2310. Act 1885 § 13, cited under § 2298.

CITATIONS.

When there was a change of judges after the commencement of the trial, the case should be tried de novo.—*Clanton v. Ryan*, 14 C. 420, 24 P. 258. *Nordloh v. Packard*, 45 C. 522, 101 P. 789.

Whether the county judge sitting in vacation may exercise jurisdiction, not determined.—*Vailes v. Brown*, 16 C. 463, 27 P. 945.

The cost bond is for the benefit of the contestee, and whether

CITATIONS CONTINUED.

given or not does not affect the jurisdiction of the court. Objection to bond.—*Nicholls v. Barrick*, 27 C. 435, 438, 62 P. 203.

The charter of Denver confers no jurisdiction upon the county court to determine a contest of a franchise election.—*Williams v. Peo.*, 38 C. 498, 88 P. 463.

2311. Contestor file statement—Contests.

SEC. 176. The contestor shall file, in the office of the clerk of the county court, within ten days after the day when the votes are canvassed, a written statement of his intention to contest the election, setting forth the name of the contestor, that he is an elector of the county; the name of the contestee; the office contested; the time of the election, and the particular cause or causes of the contest; which statement shall be verified by the affidavit of the contestor, or some elector of the county, that the causes set forth in such statement are true, as he is informed and verily believes.

Legislation. Sec. 2311. Act 1885 § 14, cited under § 2298.

CITATIONS.

Insufficient petition in original proceedings for the office of county judge, to which demurrer was sustained.—*Todd v. Stewart*, 14 C. 286, 23 P. 426. *Smith v. Harris*, 18 C. 275, 32 P. 616.

The averment of contestor that he is "an elector of the county," if denied, must be proved or the contest as such must fail.—*Clanton v. Ryan*, 14 C. 425, 426, 24 P. 258.

This section is to be construed as a statute of limitations upon a summary proceeding: time to file statement not extended because last day falls on Sunday.—*Vailes v. Brown*, 16 C. 464, 27 P. 945.

A statement which contains the averments and matters required by statute is sufficient.—*Nicholls v. Barrick*, 27 C. 436, 440, 62 P. 203.

The ten days time to file statement does not begin to run until all the precincts are canvassed.—*Vigil v. Garcia*, 36 C. 434, 87 P. 543.

2312. Issuance and service of summons—Answer of contestee.

SEC. 177. The clerk of the county court shall thereupon issue a summons in the ordinary form, in which the contestor shall be named as plaintiff and the contestee as defendant, stating the court, in which the action is brought, the county in which the statement is filed, and a brief statement of the cause or causes of contest, as set forth in contestor's said statement, which said summons shall be served upon contestee, in the same manner as other summons are served out of the county court of this state and within ten days after the filing in said court the written statement of contestor's intention, required to be filed, in contesting elections. The contestee shall, within ten days after the service of such summons, make and file his answer to the same with the clerk of said court, in which he shall either admit or specifically deny each allegation contained in such statement intended to be controverted by contestee on the trial of such contest, and shall set up in such answer any counter statement, embraced in any of the causes hereinbefore enumerated, as causes of contest in the relation to county officers, which he relies upon as entitling him to the office to which he has been declared elected. When the reception of illegal or the rejection of legal votes is alleged as the cause of the contest, a list of the number of persons who so voted, or offered to vote, shall be set forth in the statement of contestor, and shall be likewise set forth in the answer of contestee, if any such cause is alleged in his answer by way of counter statement.

[For service of summons see Code, section 40, p. 81.]

Legislation. Sec. 2312. Act 1907 p. 281 § 1, amending § 15 of the Act of 1885 p. 197, cited under § 2298. The amendments are in details which will appear by collation of the two sections. Under the old Act as it literally read, the "county clerk" was to issue the summons, but from the context with other sections, doubtless the clerk of the county court was intended the same as in the new act.

CITATIONS.

Construction of the act of 1885 as to list of names in statement. Amendment of statement to supply list of names refused because offer unseasonable.—*Schwarz v. County Court*, 14 C. 46, 23 P. 84.

CITATIONS CONTINUED.

The statute makes no provision for the amendment of pleadings, and hence the right does not exist.—*Kindel v. Le Bert*, 23 C. 385, 48 P. 641.

The system of procedure is exclusive and contestee cannot avail himself of a demurrer for the purpose for which it is ordinarily used.—*Lewis v. Boynton*, 25 C. 490, 55 P. 732.

2313. Contestor shall file reply.

SEC. 178. When the answer of contestee contains new matter constituting a counter statement, the contestor shall, with ten days after the filing of such answer, reply to the same, admitting or specifically denying, under oath, each allegation contained in such counter statement, intended by him to be controverted on the trial, and file the same in the office of said clerk.

Legislation. Sec. 2313. Act 1885 § 16, cited under § 2298.

2314. Time of trial—Testimony—Depositions—Appeals.

SEC. 179. Immediately after the joining of issue, as aforesaid, the county judge shall fix a day for the trial to commence, not more than twenty nor less than ten days after the joining of issue, as aforesaid, and such trial shall take precedence of all other business in said court. The testimony may be oral, or by depositions taken before any officer authorized to take depositions. Any depositions taken to be used upon the trial of such contest may be taken upon four days' notice thereof. The county judge trying such cause shall cause the testimony to be taken in full and filed in said cause. The trial of such causes shall be conducted according to the rules and practice of the county court in other cases. An appeal from the judgment and final determination in any cause may be taken to the supreme court, the same as in other causes tried in said court; *Provided*, That such appeal be prayed for, bill of exceptions settled, bond for costs executed and filed, and the record transmitted to the clerk of the supreme court within twenty days from the date of entering such judgment. The supreme court shall advance such cause to the head of the

calendar, and hear and determine the same with all reasonable dispatch.

[For allowance of appeal see Code, section 422, p. 149.]

Legislation. Sec. 2314. Act 1885 § 17, cited under § 2298.

CITATIONS.

Being a summary proceeding, writ of error did not lie.—*Hadley v. Fish*, 3 C. 52.

A contest may be tried notwithstanding a change of judges after the commencement of the trial, but the trial must be de novo.—*Clanton v. Ryan*, 14 C. 423, 24 P. 259. *Nordloh v. Packard*, 45 C. 522, 101 P. 789.

An appeal prosecuted under this section was redocketed for review upon writ of error.—*Young v. Simpson*, 21 C. 461, 42 P. 667.

A cause will not be advanced to the head of the calendar until the abstract and all briefs have been filed.—*Dickinson v. Freed*, 24 C. 483, 52 P. 210.

The bond for costs is for the benefit of the contestee: it should be conditioned for the payment of all costs and not in any specified penalty.—*Nicholls v. Barrick*, 27 C. 436, 438, 62 P. 203.

2315. Procedure same as in county court—Evidence not used against witness.

SEC. 180. The style and form of process, the officers by whom served, and the manner of service of process and papers and the fees of officers shall be the same as in the county court. It shall be lawful to require any person called as a witness who voted at such election to answer touching his qualifications as a voter; and, if he was not a qualified voter in the precinct or ward in which he voted, and the witness answers such questions as may be propounded to him upon the trial of such contest, no part of his testimony shall be used against him in any criminal action, except for perjury in giving such testimony.

Legislation. Sec. 2315. Act 1885 § 18, cited under § 2298.

2316. Examination of poll book and ballot box—Recount of votes.

SEC. 181. If, upon the trial of any contested election for

any officer mentioned in this act, it be proven that a vote or votes that were illegal were cast in any precinct or ward, or if the statement or counter statement sets forth an error in canvass, as hereinbefore set forth in the fourth cause of contest, the general assembly, or either branch thereof, or the trial judge provided for in this act (as the case may be), shall have power, if such illegal vote or votes or error in canvass be sufficient to change the result, to send to the precinct or ward where such illegal voting or error in canvass was done, and obtain of their custodians the poll books and ballot box used at such election, and, when so obtained, shall have the power to take out of the ballot box the poll book and ballots bearing the number corresponding to the number opposite the name on the poll book of the persons who have thus been proven to have voted illegally. The ballot or ballots so taken from the ballot box shall be examined, and, if it be found that any or all of them bear the name of either of the parties, they shall, or so many of them as do bear the name of such party, be deducted from his vote, and the determination shall be in accordance with the result after such deduction shall have been made. In all cases where there has been an error in the canvass of the vote there shall be a recount of the ballots in such ballot box, and the determination shall be in accordance with such recount.

Legislation. Sec. 2316. Act 1885 § 19, cited under § 2298.

CITATIONS.

When a recount of the ballots should be ordered, and when the ballots may be compared with the poll lists.—*Clanton v. Ryan*, 14 C. 419, 24 P. 253. *Kindel v. Le Bert*, 23 C. 391, 48 P. 641.

Recount of ballots where the evidence shows that they might have been tampered with, and the ballots indicated that they had been tampered with.—*Rhode v. Steinmetz*, 25 C. 308, 55 P. 814. (Dissenting opinion 332).

2317. Judgment.

SEC. 182. The court shall pronounce judgment whether the contestee or any other person was duly elected, and the person so

declared elected will be entitled to the office, upon qualification. If the judgment be against the contestee, and he has received his certificate, the judgment annuls it. If the court finds that no person was duly elected, the judgment shall be that the election be set aside.

Legislation. Sec. 2317. Act 1885 § 20, cited under § 2298.

CITATIONS.

The court has no power to suspend execution of a judgment which awards the office to the contestor.—*Nordloh v. Packard*, 45 C. 522, 101 P. 789.

2318. Costs.

SEC. 183. Judgment for costs, and execution thereon, shall be issued in the same manner and like effect as in any case pending or determined in the county court. The county judge shall have the same authority to enforce any order made at such trial and final judgment therein, as in other cases tried in the said court.

Legislation. Sec. 2318. Act 1885 § 21, cited under § 2298.

2319. Contest of town and precinct election—No appeal.

SEC. 184. Contested election of town and precinct officers shall be tried before the county court, as hereinbefore provided for the trial of contest of county officers, so far as the same is practicable; but the judgment rendered in such cause shall be final, and no appeal to the supreme court therefrom shall lie.

Legislation. Sec. 2319. Act 1885 § 22, cited under § 2298.

CITATIONS.

This section cited in holding (prior to sec. 1175) that there was no statutory provision for the contest of a county seat election.—*Peo. v. Grand County*, 6 C. 209.

The word "town" held to refer to incorporated towns and not to "townships."—*County Court v. Schwarz*, 13 C. 292, 22 P. 783.

The provisions of this section had no application to Denver in a contest for the office of mayor.—*Peo. v. Londoner*, 13 C. 316, 22 P. 764.

CITATIONS CONTINUED.

The county court has no jurisdiction to determine an election contest for the office of mayor of a city of the second class. The city council in cities of the first and second class is the tribunal to try election contests between its members.—*Booth v. County Court*, 18 C. 563, 33 P. 581.

L. MISCELLANEOUS PROVISIONS.

Section.

- 2320. Application of chapter.
 - 2321. Employee entitled to two hours to vote.
 - 2322. Sunday included in computation of time.
 - 2323. Ballots preserved—Ballot boxes.
 - 2324. Secretary of state send poll books—Tally lists—County clerk's duty.
 - 2325. State central committee control party controversies.
 - 2326. Chairman file membership of committee.
-

2320. Application of chapter.

SEC. 185. This chapter shall not apply to any election for school officers held at any time other than a regular election for state, county or city officers, nor to any special election at which no persons are to be voted for for any city, county or state office.

Legislation. Sec. 2320. Act 1891 § 2, cited under § 2145.

"This chapter" means all the sections of that particular Act of 1891, the Australian Ballot Act.

CITATIONS.

This section referred to in a contest for district judge.—*Allen v. Glynn*, 17 C. 342, 29 P. 671.

This section specially exempts annexation elections.—*Phillips v. Corbin*, 8 A. 352, 46 P. 224.

2321. Employee entitled to two hours to vote.

SEC. 186. Any person entitled to vote at a general election held within this state shall, on the day of such election, be entitled to absent himself away from any service or employment in which he is then engaged or employed for a period of two hours between the time of opening and the time of closing the polls,

and any such absence shall not be sufficient reason for the discharge of any such person from such service or employment, and such voter shall not, because of so absenting himself, be liable to any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages (except when such employe is employed and paid by the hour). *Provided, however,* That application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employe may absent himself as aforesaid. Any person or corporation who shall refuse to his or its employe the privilege hereby conferred, or who shall subject an employe to a penalty or reduction of wages because of the exercise of such privilege, or who shall directly or indirectly violate the provisions of this act, shall be deemed guilty of a misdemeanor.

Legislation. Sec. 2321. Act 1891 § 38, cited under § 2145.

2322. Sunday included in computation of time.

SEC. 187. Sunday shall be included in all computations of time made under the provisions of this act.

Legislation. Sec. 2322. Act 1891 § 40, cited under § 2145.

2323. Ballots preserved—Ballot boxes.

SEC. 188. The proper ballots, when not required to be taken from the ballot box for the purpose of election contests, shall remain in the ballot box in the custody of the county clerk and recorder until the next election; when before opening the polls, the ballot box shall be opened in the presence of the judges, and the ballots destroyed by fire; *Provided,* That if the ballot boxes be needed for a special election before the legal time for commencing any proceedings in the way of contests shall have elapsed, or in case such judges, at the time of holding of such special election, have knowledge of the pendency of any contest in which the ballots would be needed, the said judges shall preserve the ballots in some secure manner and provide for their being so kept, that no one can ascertain how any elector may have voted.

Legislation. Sec. 2323. Act 1883 p. 186 § 6. G. S. § 1221 amending G. L. § 997. The original section made "one of the judges of the election"

the custodian, while it is now the "county clerk and recorder." Under territory "one of the judges or board" was the custodian. R. S. p. 293 § 44. But by Act of 1874 p. 117 § 6, after election they were to be kept by the county clerk, that section being very similar to the present text.

CITATIONS.

Where pending an appeal the ballots are destroyed rendering any ruling which might be made in favor of the appellant ineffectual, the court may decline to pass upon any of the controverted questions.—*Kindel v. Le Bert*, 23 C. 399, 48 P. 646.

2324. Secretary of state send poll books—Tally lists—County clerk's duty.

SEC. 189. It shall be the duty of the secretary of state to make out a complete form of poll books, tally lists, and all the forms required by this act, to be used by judges of election and the county clerks, and to send printed copies thereof to the county clerk of each county, and he shall cause to be printed in pamphlet form such parts of this act as are necessary for the guidance of the judges of election in the discharge of their duties, and to send printed copies thereof to the county clerk of each county for him to distribute to the judges in each precinct or ward.

Legislation. Sec. 2324. G. L. § 995. G. S. § 1219.

2325. State central committee control controversies of party.

SEC. 190. The state central committee of any political party in this state shall have full power to pass upon and determine all controversies concerning the regularity of the organization of that party within and for any congressional, judicial, senatorial or representative district, or county, or city, in this state, and also concerning the right to the use of the party name, and may make such rules governing the method of passing upon and determining such controversies as it may deem best, unless such rules shall have theretofore provided by the state convention of such party, and all such determinations upon the part of the state central committee shall be final: *Provided, however*, That from the time the state convention of such party convenes until the time of its final adjournment such state convention shall have all the powers above given to the state central committee, but not otherwise: *And, provided, further*, That the state convention of

such party may provide rules that shall govern the state central committee in the exercise of the powers herein conferred upon such committee.

Legislation. Sec. 2325. Act 1901 p. 169 § 1, entitled:

**AN ACT
Relating to Political Parties.**

CITATIONS.

This act is not in violation of sec. 11, art. 8, of the constitution on the ground that it divests the district courts of jurisdiction.—*Peo. v. Dist. Court*, 32 C. 19, 74 P. 897.

Factional disputes must be referred to the committee and the courts have no jurisdiction of such disputes.—*Id.*

2326. Chairman file membership of committee.

SEC. 191. Within ten days after the adjournment of the state convention of any political party at which a state central committee is selected, the chairman and secretary of said convention shall under oath file with the secretary of the state a full and complete roll of the membership of said state central committee.

Legislation. Sec. 2326. Act 1901 § 2, cited under § 2325.

CITATIONS.

The filing of the roll of members is not a condition precedent to the exercise by the committee of the power to determine a factional controversy.—*Peo. v. Dist. Court*, 32 C. 23, 74 P. 897.

II. SPECIAL ELECTIONS AND VACANCIES.

Section.

2327. Proceedings.

2328. Special elections—Canvass.

2329. Vacancies in general assembly—Governor issue writs of election.

2330. Vacancy in congress.

2331. Vacancies in state and county office, how filled.

2332. When officer qualify—Elected and appointed hold different terms.

2333. Vacancies in county office—County commissioners appoint.

2334. Governor appoint county commissioners.

2327. Proceedings.

SEC. 192. The same proceedings shall be had in all cases of special elections as are herein provided for general elections, so far as the same may be applicable.

Legislation. Sec. 2327. R. S. p. 303 § 80. Act of 1874 p. 111 § 13. G. L. § 1047. G. S. § 1271.

2328. Special elections—Canvass.

SEC. 193. Special elections shall be conducted and the results thereof canvassed and certified in all respects as near as practicable in like manner as general elections, except as otherwise provided; but special elections shall not be held, unless when required by public good, and in no case within ninety days next preceding a general election.

Legislation. Sec. 2328. G. L. § 940. G. S. § 1164.

R. S. p. 284 § 6 was of similar purport, but the period was 30 instead of 90 days.

CITATIONS.

This section considered inapplicable to a special election to fill vacancy in the office of mayor.—*Rizer v. Peo.*, 18 A. 45, 69 P. 316.

The county clerk and two justices, and not the city council, were the canvassers of the returns of the election for members of the Denver Charter Convention.—*McMurray v. Wright*, 19 A. 18, 73 P. 258.

2329. Vacancies in general assembly—Governor issue writs of election.

SEC. 194. Whenever a vacancy shall occur in the office of senator or member of the house of representatives in any county or counties or district in this state, entitled by law to such senator or representative, the governor shall, upon satisfactory information thereof, and as soon as the necessity is apparent, issue a writ or writs of election to the sheriff or sheriffs of said county or counties, entitled by law to such senator or representative, as aforesaid, directing him to give notice of a special election within such county or counties on a day specified in such writ or writs, for the purpose of filling such vacancy; and the sheriff shall

proceed to give notice of the time and place of holding such election, as in other cases, and such election shall be held and conducted, and the returns thereof be made to the county clerks, in the same manner and within the time specified in this act.

Legislation. Sec. 2329. G. L. § 939. G. S. § 1163.

Legislative vacancies were provided for by R. S. p. 291 § 37 and by Act of 1861 p. 109, reprinted as R. S. p. 296 §§58-63.

2330. Vacancy in congress.

SEC. 195. Whenever any vacancy shall happen in the office of representative in congress from this state, it shall be the duty of the governor to appoint a day to hold a special election to fill such vacancy, and cause notice of such election to be given as required in section twenty of this act.

[Section 20 above referred to is section 2143.]

Legislation. Sec. 2330. G. L. § 943. G. S. § 1167.

Vacancy in the office of delegate to congress was provided for by R. S. p. 284 § 4, which was a section enumerating instances which called for a special election.

2331. Vacancies—How filled.

SEC. 196. All vacancies in any state or county office, and in the supreme or district courts, unless otherwise provided for by law, shall be filled by appointment by the governor until the next general election after such vacancy occurs, when such vacancy shall be filled by election, and the district judge shall fill all vacancies in the office of district attorney in his district by appointment until the next general election.

Legislation. Sec. 2331. G. L. § 935. G. S. § 1159.

We find no sections in the elections chapter of the R. S. 1868, nor in the election law of 1874, allowing the governor to fill vacancies. But he could make temporary appointment of auditor or treasurer in certain instances. Act 1861 p. 141 § 10. R. S. p. 80 § 10. See § 2334 as to county commissioners.

CITATIONS.

An appointed district attorney holds office only until the next general election.—*Peo. v. Wright*, 6 C. 95.

District judges elected to fill vacancies hold only for the unexpired term.—*Peo. v. LeFevre*, 21 C. 243, 40 P. 891.

2332. When officer qualify—Elected and appointed hold different term.

SEC. 197. Any of the said officers that may be elected or appointed to fill vacancies may qualify and enter upon the duties of their office immediately thereafter, and if elected they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified, but if appointed they shall hold the same only until their successors are elected and qualified.

Legislation. Sec. 2332. G. L. § 938. G. S. § 1162.

CITATIONS.

An appointed district attorney holds office only until the next general election.—*Peo. v. Wright*, 6 C. 95.

District judges elected to fill vacancies hold only for the unexpired term.—*Peo v. LeFevre*. 21 C. 243, 40 P. 891.

One appointed to fill a vacancy holds precisely as his predecessor would have done had the vacancy not occurred.—*Peo. v. De Guelle*, 47 C. 17, 105 P. 1111.

2333. Vacancies in county office—County commissioners appoint.

SEC. 198. All vacancies in any county or precinct office of any of the several counties of the state, except that of the county commissioner, shall be filled by appointment by the county commissioners of the county in which the vacancy occurs, until the next general election, when such vacancy shall be filled by election subject to the provisions of sections twenty-nine, article six, of the constitution.

Legislation. Sec. 2333. G. L. § 941. G. S. § 1165.

CITATIONS.

One appointed to fill a vacancy holds precisely as his predecessor would have done had the vacancy not occurred.—*Peo. v. De Guelle*, 47 C. 17, 105 P. 1111.

2334. Governor appoint county commissioners.

SEC. 199. Whenever the governor appoints a county com-

missioner to fill a vacancy in any county he shall appoint a person who is a resident of the county and of the commissioner district of the county in which the vacancy exists.

Legislation. Sec. 2334. G. L. § 942. G. S. § 1166.

III. ELECTION OF PRESIDENT.

Section.

2335. When electors meet—Vacancies, how filled—Duties.

2336. Fees of electors—Special elections—Call—Canvass.

2335. When electors meet—Vacancies—How filled—Duties.

SEC. 200. The electors of president and vice-president of the United States shall convene at the capital of the state, on the first Wednesday of December, next after their election, at the hour of twelve o'clock at noon of that day; and if there shall be any vacancy in the office of electors, occasioned by death, refusal to act, neglect to attend, or other cause, the elector or electors present shall immediately proceed to fill such vacancy in the electoral college; and when the vacancies shall have been filled as above provided they shall proceed to perform the duties required of such electors by the constitution and laws of the United States, and vote for president and vice-president by open ballot.

Legislation. Sec. 2335. G. L. § 990. G. S. Sec. 1214.

2336. Fees of electors—Special elections—Call—Canvass.

SEC. 201. Every elector of this state for the election of president and vice-president of the United States, hereafter elected, who shall attend and give his vote for those officers at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each day's attendance at such election, and fifteen cents per mile for each mile he shall travel in going to and returning from the place where the electors shall meet, by the most usual traveled route, to be paid out of the general contingent fund, and the auditor of state shall audit the amount and draw his warrant for the same. There shall be an election held

in this state for the election of such electors at the times appointed by any law of congress or the constitution of the United States for such election, and when such election shall be special, the same shall be called, held, and the votes polled, canvassed in all respects as at a general election, and the duties of the electors so elected shall be the same as prescribed by law for electors elected at a general election.

Legislation. Sec. 2336. G. L. § 991. G. S. § 1215.

IV. VOTING MACHINES.

Section.

- 2337. May be used in elections.
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 - 2358. Penalty for tampering with machine—Application of election law—Penalties.
 - 2359. Election laws apply.
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2337. May be used in all elections.

SEC. 202. In all elections hereafter held in this state for presidential electors and members of congress, or either of them,

and in all state, county, city and county and town elections, and in all other elections hereafter to be held in this state or in any political division thereof, for any purpose whatever, voting machines may be used; and at any and all such elections the vote or ballot may be had and taken, and the votes cast thereat registered or recorded and counted, and the result of such election or elections ascertained by voting machines instead of in the mode and manner now established by law; *Provided*, That the use of said machines at any such election or elections shall be subject to the requirements, provisions, terms and conditions of this act hereinafter contained.

Legislation. Sec. 2337. Act 1905 p. 220 § 1, entitled:

AN ACT

To Authorize the Use of Voting Machines at Elections Hereafter to be Held in this State, or in Any Sub-division Thereof, and Providing that the Votes Cast at Any Such Elections May Be Registered or Recorded and Counted, and the Result of Such Elections Ascertained by Such Machines.

There was no prior legislation on this subject, and, so far as we know, no voting machines have been presented that meet all required conditions.

2338. State board of voting machine commissioners—Term.

SEC. 203. Within thirty days after this act shall take effect and be in force the governor shall appoint three persons who shall constitute "The state board of voting machine commissioners," who shall be sworn to perform their duties faithfully; the members of said board shall hold office for the term of five years; their successors shall be appointed by the governor for terms of five years; any vacancy occurring in said board by death, resignation or otherwise, shall be filled by the governor for the unexpired term only; any member of said board may be removed at the pleasure of the governor; no member of said board shall have any pecuniary interest, directly or indirectly, in any voting machine; at least two of said board shall be master mechanics or graduates of a school of mechanical engineering, one to be appointed from each of the two political parties, which shall have received the highest number of votes at the election held for the office of

governor of the state next preceding the date of such appointments.

Legislation. Sec. 2338. Act 1905 § 2, cited under § 2337.

2339. Examination of machines—Report of board.

SEC. 204. Any person, company or corporation owning any voting machine may apply to the state board of voting machine commissioners to examine such machine and report on its compliance with the requirements of the law and its accuracy, efficiency and capacity to register the will of voters; upon such application the said board shall examine such machine and make report whether, in its opinion, or in the opinion of any two of the members thereof, the kind of machine so examined complies with the requirements of this act and can safely be used at elections to be held in this state under the conditions prescribed by this act; the report of said board on said machine, signed by the members thereof, or any two of them, and all exhibits, drawings, photographs, descriptions, etc., filed in connection with and identifying said machine so examined, shall be filed in the office of the secretary of state within ten days, and shall be a public record; if the report of the board, or any two members thereof, be that machines of the kind examined can be used, such kind of machines shall be deemed to be approved by the board, and its use as herein provided shall be authorized at any such election as aforesaid to be held in this state or any civil division thereof; any kind of voting machine not so approved by said board shall not be used at any election; the examination herein provided for shall not be required of each individual machine, but only of each particular kind of machine before its adoption, use or purchase, as herein provided; when the machine has been so approved, any improvement or change that does not impair its accuracy, efficiency or capacity shall not render necessary a re-examination or re-approval thereof. All examinations shall be in public; sufficient notice shall be given to such interested persons as shall file with the commission a notice of their desire to attend such examinations.

Legislation. Sec. 2339. Act 1905 § 3, cited under § 2337.

2340. Applicant deposit fees.

SEC. 205. Any person, company or corporation applying to have any voting machine examined shall deposit with the secretary of said board the sum of three hundred dollars as the fee of said board; except as herein provided, the members of said board shall not receive any compensation or remuneration for their services.

Legislation. Sec. 2340. Act 1906 § 4, cited under § 2337.

2341. Construction of machine—Model for instruction of voters.

SEC. 206. No voting machine shall be approved by the board of voting machine commissioners unless it shall be so constructed as to insure every voter an opportunity to vote in secrecy; that it can be closed during the progress of the voting so that no person can see or know the number of votes registered for any candidate or for whom the elector has voted; that each machine shall be so constructed as to provide facilities for voting for the candidates of at least seven parties or organizations with a separate voting device and counter for each candidate thereof; that a straight party ticket can be voted by the operation of a single device; that the voter may vote for a part of one party ticket, and a part of one or more other party tickets; that a voter can not vote for a candidate or on a question for whom or on which he is not lawfully entitled to vote; that the voter will be prevented from casting more than one vote for any candidate, or voting for more than one person for the same office, unless he is lawfully entitled to vote for more than one person therefor, and in that event permits him to vote for as many persons for that office as he is by law entitled to vote for, and no more, but all votes for nominated candidates for such officers shall be cast and counted in the same manner as for all other nominated candidates, except as hereinafter provided for presidential electors; that the machine will be provided with at least seven pairs of "Yes" and "No" counters for voting on questions, with the operating or voting devices therefor; that such machine will correctly register, by means of mechanical counters, having registering wheels, every vote cast for candidates whose names are printed on the ballot

labels or for questions; that the names of the candidates for presidential electors shall not occur on the ballot labels, but in lieu thereof, one ballot in each party column, or row, shall contain only the words "Presidential Electors," preceded by the party name, and the names of the candidates for president and vice-president, and every vote registered for such ballot shall operate as a vote for all candidates of such party for presidential electors, and be counted as such, but it shall provide means for voting a split or irregular ticket for presidential electors; that any voter can by means of irregular ballots vote a written or printed ballot of his own selection for any person for any office, although such person may not have been nominated by any party, but such irregular balloting device or devices shall not be used for voting for any regularly nominated candidates, except for presidential electors, as herein provided; that a voter may readily understand how to vote, and within a period of one minute cast his vote for all the candidates for his choice and that he can change his vote for any regularly nominated candidate up to the time he starts to leave the machine. All voting machines shall have their voting devices for the individual candidates arranged in separate parallel party lines, one line for each party, and in parallel office rows, transverse thereto; each machine must be provided with a lock or locks, the keys of which can not be interchangeably used, and by the locking of which any movement of the operating mechanism can be prevented, so that it can not be tampered with or manipulated for any fraudulent purpose; and that the doors of the compartment containing the registering mechanism can be locked so that no person can see or know the number of votes registered for any candidate; there shall be a counter, the registering face of which can be seen at all times from the outside of the machine, which will show during the election the total number of voters that have operated the machine at that election; there shall be a registering lock, or a counter, which can not be reset and will lock by the part that operates it, and will count up to a million; such lock or counter shall be known as a protective lock, or a protective counter, and shall be so constructed that the numbers on the lock will be changed or the number on the counter shall be advanced one every

time the machine is operated. With each voting machine there shall be provided by the makers a working model for instruction of voters, which shall represent at least five office lines for two party rows, and the devices for voting for two questions, and shall correspond to the equivalent parts on the face of the voting machine, and the operation of the model shall be the same in outward appearance as the operation of the machine.

Legislation. Sec. 2341. Act 1905 § 5, cited under § 2337.

2342. Any approved machine may be adopted and used.

SEC. 207. The governing body of any county, city, city and county, or town or other political division may adopt for use at elections any kind of voting machine approved by the state board of voting machine commissioners; and thereupon such voting machine may be used at any or all elections held in such county, city, city and county, town or other political division, or in any part thereof, for voting, registering and counting votes cast at such elections; different voting machines may be adopted for different voting districts or precincts in the same county, city, city and county or town, or other political division. Said governing bodies adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order; and if it shall be impracticable to supply each and every election district or precinct with a voting machine or voting machines at any election following such adoption as many may be supplied or as it is practicable to procure, and the same may be used in such election districts or precincts as they may direct. The governing body of any county, city, city and county or town, including the city and county of Denver, and any city, city and county or town which may be governed by the provisions of special charter, adopting and purchasing a voting machine, or voting machines, may provide for the payment therefor by the issuance of interest-bearing bonds, certificates of indebtedness or other obligation, which shall be a charge upon such county, city, city and county, or town; such bonds, certificates or other obligations may be made payable at such time, or times, not exceeding ten

years from the date of issue, as may be determined, but shall not be issued or sold at less than par.

Legislation. Sec. 2342. Act 1905 § 6, cited under § 2327.

2343. Secretary of state prescribe rules for care of machines —Ballots.

SEC. 208. The secretary of state shall prescribe rules and regulations in addition to those contained in this act, regarding the care of voting machines by the local authorities which shall govern the conduct of the election judges, clerks and voters in the use of such voting machines during elections; and for printing ballots and return sheets, and for making returns thereof; and shall prepare and furnish all necessary instructions for the use of such voting machines. All printed instructions how to vote to be distributed to voters shall conform to instructions approved by the secretary of state, and it shall be unlawful for any person or persons to print or circulate misleading instructions regarding the method of voting.

Legislation. Sec. 2343. Act 1905 § 7, cited under § 2337.

2344. Preservation of machines.

SEC. 209. Any governing body providing voting machines for use in elections shall preserve and keep them in good order, and, for the purpose of preparing machines for election, shall employ one or more competent persons, machinists if possible, and shall pay them for such time as they shall be engaged in such duties; they shall, in addition to such duties, instruct the election officers in the use of the machines; such governing body shall also provide for the giving of such instructions for their use to voters as in their judgment shall be necessary.

Legislation. Sec. 2344. Act 1905 § 8, cited under § 2337.

2345. Election precincts.

SEC. 210. For any election in any political division within the state in which voting machines are to be used, the election districts or precincts in which such machines are to be used may be created by the officers charged with the duty of creating elec-

tion districts or precincts so as to contain as near as may be six hundred voters each, based upon the last preceding general elections. Such re-districting or re-division may be made at any time not less than sixty days preceding any election, and when so made shall take effect immediately.

[See also section 2229.]

Legislation. Sec. 2345. Act 1905 § 9, cited under § 2337.

2346. Appointees sworn.

SEC. 211. All persons appointed in pursuance of this act shall be sworn to perform their duties faithfully and honestly, and for the purposes of this act shall be allowed the same freedom of the election rooms as are officers of election.

Legislation. Sec. 2346. Act 1905 § 10, cited under § 2337.

2347. Experimental use of machines.

SEC. 212. The governing body of any county, city, city and county, or town, or other political division, may provide for the experimental use at any election or elections, in one or more election districts or precincts, of any machine which it might lawfully adopt, without a formal adoption thereof, and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

Legislation. Sec. 2347. Act 1905 § 11, cited under § 2337.

2348. Arrangement of polling place.

SEC. 213. The room in which the election is held shall have a railing separating the part of the room occupied by the judges and clerks of election from that part of the room occupied by the voting machine. The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling place, and at least four feet from any election officer or table used by them, and it shall be so placed that no person on the opposite side of the railing can see or determine from the outside of the room how the voter casts his vote. After the opening of the polls the elec-

tion judges shall allow no person to pass within the railing to the part of the room where the machine is situated except for the purpose of voting, except as is provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain, or permit any other person to remain, in any position or near any position that would permit one to see or ascertain how a voter votes or how he has voted. No voter shall remain within the voting booth or compartment longer than one minute, and if any voter shall refuse to leave after the lapse of that time he shall at once be removed by the election officers, or upon their order.

Legislation. Sec. 2348. Act 1905 § 12, cited under § 2337.

2349 Assistance to voter unable to read English or use machine.

SEC. 214. Any voter who may declare upon oath that he can not read the English language, or that by reason of physical disability he is unable to use the voting machine, shall, upon request, be assisted by two of the election officers of different parties to be selected from the judges and clerks of the precinct in which they are to act, to be designated by the judges of election at the opening of the polls. Such officers, in the voter's presence and in the presence of each other, shall register his vote upon the machine for the candidate of his choice, and shall thereafter give no information regarding the same. The clerks of election shall enter upon the poll list after the name of any elector who received such assistance in registering his vote a memorandum of the fact. Intoxication shall not be regarded as a physical disability, and no intoxicated person shall be entitled to assistance in registering his vote.

Legislation. Sec. 2349. Act 1905 § 13, cited under § 2337.

2350. Instructions to voter after entering machine.

SEC. 215. In case any elector, after entering the voting machine booth, shall ask for further instruction concerning the manner of voting, two judges of opposite political parties shall

give such instructions to him; but no judge or other election officer or person assisting an elector shall in any manner request, suggest or seek to persuade or induce any such elector to vote any particular ticket or for any particular candidate, or for or against any particular amendment, question or proposition. After receiving such instructions such elector shall vote as in the case of an unassisted voter.

Legislation. Sec. 2350. Act 1905 § 14, cited under § 2337.

2351. Ballot label—By whom furnished.

SEC. 216. That portion of cardboard, paper or other material placed on the front of the machine, and containing the names of the candidates or a statement of the proposed constitutional amendment or other question or proposition to be voted on, shall be known in this act as a ballot label. The ballot label shall be supplied by the official or officials charged by law with providing material for the holding of an election or elections, and shall be printed in black ink on clear white material, of such size as will fit the machine, and in plain, clear type, as large as the space will reasonably permit. The party name or other designation shall be prefixed to the list of candidates of such party. The order of the lists of candidates of the several parties shall be arranged as is now provided by law, except that the lists may be placed in horizontal rows or vertical columns, which parties may, if desired, be divided into parallel and contiguous rows or columns.

Legislation. Sec. 2351. Act 1905 § 15, cited under § 2337.

2352. Sample ballot labels for public inspection.

SEC. 217. The officers or board charged with the duty of providing ballots and ballot labels for any polling place shall provide therefor two sample ballot labels, which shall be arranged in the form of a diagram, showing the entire front of the voting machine as it will appear after the official ballot labels are arranged for voting on election day. Such sample ballot labels shall

be displayed for public inspection at such polling place during the day preceding election day.

Legislation. Sec. 2352. Act 1905 § 16, cited under § 2337.

2353. Four sets of ballot labels—Delivery of machine at polling place—Inspection of machine before election.

SEC. 218. Four sets of ballot labels for use in the voting machine shall be provided for each polling place for each election by the officer or officers now charged by law with the duty of furnishing such election precincts with ballots. In such manner shall be furnished, also, all other necessary material for the use of the voting machines. The same officer or officers shall, before the day of election, cause the proper ballot labels to be put upon each machine corresponding with the sample ballot labels herein provided for, and the machine in every way to be put in order, set and adjusted, ready for use in voting when delivered at the precinct. And the same officer or officers shall cause the machine so labeled in order, set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same, in the room where the election is to be held in the precinct, not later than 6 o'clock p. m. of the day preceding the election. After the delivery of the machine, and on the same day, the judges and clerks of election of the precinct may meet at said room, open the package containing the sample ballots, and, if necessary, the ballot labels, and see that the machine is correctly labeled, set and adjusted, ready for use in voting; and if the same is not so labeled, set and adjusted and in order, they shall cause it to be done. On the morning of the election the election officers shall meet in the said room at least one hour before the time for opening the polls. They shall see that the sample ballot labels and instruction cards are posted properly, and everything put in readiness for the voting at the hour of opening the polls. The officers shall compare ballot labels on the machine with the sample ballots, see that they are correct, examine and see that all the counters in the machine are set at naught or zero (0), and that the machine is otherwise in perfect

order, and they shall not thereafter permit the counters to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine.

Legislation. Sec. 2353. Act 1905 § 17, cited under § 2337.

2354. Irregular ballots.

SEC. 219. Ballots voted for any person whose name does not appear on the ballot label on the machine as a candidate are herein referred to as irregular ballots.

Legislation. Sec. 2354. Act 1905 § 18, cited under § 2337.

2355. Machine opened at close of polls.

SEC. 220. As soon as the polls are closed the voting machine shall be locked against voting, and the counting compartment opened in the presence of all the judges and clerks of election, and all other persons who may be lawfully within the room, giving full view of the numbers announcing the votes cast for each candidate, and for and against the various constitutional amendments, questions or other propositions.

Legislation. Sec. 2355. Act 1905 § 19, cited under § 2337.

2356. Announcement of vote—Returns—Machine open to inspection.

SEC. 221. The election officers shall then ascertain the number of votes which the candidates have received, both on the machine and by the voting of irregular ballots, if any, and one of the judges shall publicly announce in a distinct voice the total vote for each candidate thus ascertained in the order of the offices as their titles are arranged on the ballot label. He shall then announce in the same manner the vote on each constitutional amendment, proposition or other question. Before leaving the room, and before closing and locking the counting compartment, the election officers shall make and sign written statements or returns of such election, as now required by law. When irregular ballots have been voted they shall be returned, preserved and

finally destroyed, as is now provided by law in the case of other election ballots. The written statements or returns so made, after having been properly signed, shall be distinctly and clearly read in the hearing of all persons present, and ample opportunity shall be given to compare the results so certified with the counter dials of the machine. After such comparison and correction, if any is made, the election officers shall then close the counting compartment and lock the same. Thereafter the machine shall remain locked for a period of at least ninety days, unless otherwise ordered by a court of competent jurisdiction. And said counting compartment shall be allowed to remain open for the inspection of all watchers and such electors of the precinct as shall desire to inspect the same for a period of at least one hour after the polls are closed, provided such inspection shall not be permitted to interfere with the election officials in taking off and recording the votes indicated on the counters.

Legislation. Sec. 2356. Act 1905 § 20, cited under § 2337.

2357. Keys returned with election returns.

SEC. 222. When the machine is locked at the close of an election in the manner required by this act, the judges shall place all keys of the machine on a single piece of flexible wire; unite the ends of such wire in a firm knot, label the same with the make and number of the machine and the precinct at which it was used at such election, and return such keys along with the written statement or returns of such election.

Legislation. Sec. 2357. Act 1905 § 21, cited under § 2337.

2358. Penalty for tampering with machine—Application of election laws—Penalties.

SEC. 223. The provisions of the penal statutes and of the election laws relating to misconduct at elections shall apply to elections with voting machines. Any person who shall before or during an election tamper with any voting machine, or who shall interfere or attempt to interfere with the correct operation of the voting machine, or the secrecy of voting; or who shall wilfully injure a voting machine to prevent its use; or any election or

police officer, or anyone employed to assist in the care or arrangement of the voting machine, who shall permit any person to violate the secrecy of the voting, or to interfere in any way with the correct operation of the voting machines; or any unauthorized person who shall make a duplicate or have in his possession a key to a voting machine that has been adopted and will be used in elections in this state shall be guilty of a felony, punishable by imprisonment in a state prison for not less than one year nor more than five years.

Legislation. Sec. 2358. Act 1905 § 22, cited under § 2337.

2359. Election laws apply.

SEC. 224. All the provisions of the election law, not inconsistent with this act, shall apply to all elections held in the election districts or precincts where such voting machines are used. Any provisions of law which conflict with the use of such machine or machines as herein set forth, shall not apply to the precinct or precincts in which an election is conducted by the use of such machine or machines.

Legislation. Sec. 2359. Act 1905 § 23, cited under § 2337.

2360. When act becomes in force.

SEC. 225. This act shall take effect and be in force on and after the thirtieth day of December, A. D. 1906, only in the event that the constitutional amendment of section 8 of article 7, providing that "all elections by the people shall be by secret ballot" and that nothing in the said section as amended "shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting be preserved," submitted and proposed by the fifteenth general assembly, shall be adopted by the people at the general election to be held in November, 1906, but not otherwise.

[The above constitutional amendment was adopted Nov. 6, 1906.]

Legislation. Sec. 2360. Act 1905 § 24, cited under § 2337.

V. OFFENSES.

Section.

- 2361. Voting twice—Penalty.
- 2362. Influencing vote—Penalty—Bribery—Threat—Penalty.
- 2363. Unlawful to give or advance money or promise employment to influence voter.
- 2364. Unlawful to receive money or employment or contract for valuable consideration to vote.
- 2365. Unlawful for candidate to make bet or wager with voter.
- 2366. Unlawful to use violence or intimidation to influence voters.
- 2367. Unlawful to discharge or promote employes to influence vote.
- 2368. Candidates file statements of expense incurred—Chairmen and secretaries of central committees file statement.
- 2369. Unlawful to interfere with election official, ballot box, poll book, etc.
- 2370. Offender competent witness—Testimony not to be used against witness.
- 2371. Penalties for offenses.
- 2372. Applicable to all elections.
- 2373. Penalty for exposing ballot—False statement—Interference with voter.
- 2374. Penalty for destruction of supplies or hindering voter.
- 2375. Penalty for destroying certificates of nomination—False endorsement.
- 2376. Penalty for neglect of duty—Destruction of ballots—Breaking seal on ballot.
- 2377. Electioneering—Removing ballot—Return of ballot to judges.
- 2378. Unlawful to take liquor into polling place.
- 2379. Punishment of offenses—Witnesses.
- 2380. Judge signing wrongfully—Penalty.
- 2381. Penalty for making false affidavit.
- 2382. Penalty for procuring false registry.
- 2383. Penalty for adding names to completed registry.
- 2384. Fines paid for use of school fund.
- 2385. Closing saloons—Penalty for selling liquors.
- 2386. Selling liquor between sunrise and sunset on election day.
- 2387. Personating voter—Penalty.
- 2388. False swearing—Penalty.
- 2389. Suborning perjury—Penalty.
- 2390. Punishment for neglect of officers—Misconduct.
- 2391. Judge admitting illegal vote—Penalty.
- 2392. Bribing or influencing vote—Menace—Penalty.
- 2393. Voting in wrong wards—Penalty.
- 2394. Receiving bribe—Penalty.
- 2395. Mutilating, taking away or destroying poll book—Penalty.
- 2396. Frauds at primaries or conventions.
- 2397. Bribery at primaries or conventions.
- 2398. Members of another party may not vote.

V. OFFENSES.

Continued.

Section.

2399. Penalty.

2400. Frauds by primary or convention officials—Penalty.

2401. Employers not to influence employes.

2361. Voting twice—Penalty.

SEC. 226. If any elector shall vote more than once, or, having voted once, shall offer to vote again, at any election, or shall offer to deposit in the ballot box, at any election, more than one ballot, he shall be deemed guilty of a misdemeanor, and, on conviction, thereof shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding sixty days.

[For voting in wrong ward or precinct, see section 2393.]

Legislation. Sec. 2361. G. L. § 959. G. S. § 1183, repealing by implication R. S. p. 230 § 153. G. L. § 752. G. S. § 874, which read:

Sec. 157. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this state, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

The R. S. section cited was an amendment of Act of 1861 p. 78 § 25. The fine by the Act of 1861 was \$100.

R. S. p. 288 § 25 duplicated the section on its p. 230, with a different penalty.

2362. Influencing voter—Bribery—Threat—Penalty.

SEC. 227. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this state in giving his vote at any election, every person so offending and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this state for five years.

[See Constitution, art. 7, section 10, as to restoration of convicts.]

Legislation. Sec. 2362. R. S. p. 230 § 154. G. L. § 753. G. S. § 875.

CITATIONS.

Section 2392 operates to repeal this section.—*Peo. v. Goddard*, 8 C. 434, 7 P. 303.

2363. Unlawful to give or advance money or promise employment to influence voters.

SEC. 228. It shall be unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan or contribute, or offer, or promise to pay, loan or contribute, any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election provided by law, or to introduce any voter to vote or refrain from voting at such election for any particular person or persons, or to induce such voter to go to the polls, or remain away from the polls at such election, or on account of such voter having voted or refrained from voting for any particular person, or having gone to the polls or remained away from the polls at such election.

(b) To give, offer or promise any office, place or employment, or to promise or procure or endeavor to procure any office, place or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election provided by law, or to induce any voter to vote or refrain from voting at such election for any particular person or persons.

(c) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law, or to knowingly pay or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any such election.

Legislation. Sec. 2363. Act 1891 p. 167 § 1, entitled:

AN ACT

In Relation to Elections and Crimes and Offenses Against the Elective Franchise.

2364. Unlawful to receive money or employment or contract for valuable consideration to vote.

SEC. 229. It shall be unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To receive, agree or contract for, before or during an election provided by law, any money, gift, loan or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting or for voting or agreeing to vote, or refraining or agreeing to refrain from voting for any particular person or persons, measure or measures, at any election provided by law.

(b) To receive any money or other valuable thing during or after an election provided by law, on account of himself or any other person, for voting or refraining from voting at such election, or on account of himself or any other person, for voting or refraining from voting for any particular person at such election or on account of himself, or any other person, for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting or to vote or to refrain from voting for any particular person or persons, measure or measures, at such election.

Legislation. Sec. 2364. Act 1891 § 2, cited under § 2363.

2365. Unlawful for candidate to make bet or wager with voter.

Sec. 230. It shall be unlawful for any candidate for public office, before or during any election provided by law, to make any bet or wager with a voter, or take a share or interest in, or in any manner become a party to, any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager, upon any event or contingency whatever, arising out of such election. Nor shall it be lawful for any person, directly or indirectly, to make a bet or wager with a voter, depending upon the result of any election provided by law, with the intent thereby to procure the challenge of such voter or to prevent him from voting at such election. Any violation of this section shall be deemed a misdemeanor.

Legislation. Sec. 2365. Act 1891 § 3, cited under § 2363.

CITATIONS.

This is a penal statute and declares that violation of it shall be a misdemeanor. It does not declare that the guilty party shall forfeit his office as a part of his punishment.—*Gillett v. Peo.*, 13 A. 561, 59 P. 74.

2366. Unlawful to use violence or intimidation to influence voters.

SEC. 231. It shall be unlawful for any person directly or indirectly, by himself or any other person in his behalf, to make use of any force, violence, or restraint, or to inflict, or threaten the infliction, by himself or through another person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting for any particular person or persons, measure or measures, at any election provided by law, or on account of such person having voted or refrained from voting at any such election. And it shall be unlawful for any person, by abduction, duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or prevail upon any voter, either to give or refrain from giving his vote at any such election, or to give or refrain from giving his vote for any particular person at any such election. It shall be unlawful for any employer, either corporation, association, company, firm or person, in paying its, their or his employes the salary or wages due them, to inclose their pay in "Pay Envelopes" upon which there is written or printed any political mottoes, devices or arguments, containing threats, express or implied, intended or calculated to influence the political opinion, views or actions of such employes. Nor shall it be lawful for any employer, either corporation, association, company, firm or person, within ninety days of any election provided by law, to put up or otherwise exhibit in its, their or his factory, workshop, mine, mill, boarding-house, office or other establishment or place where its, their or his employes may be working or be present in the course of such employment, any hand-bill, notice or placard containing any threat, notice or information that in case any

particular ticket or candidate shall be elected, work in its, their or his place or establishment will cease in whole or in part or its, their or his establishment be closed, or the wages of its, their or his workmen be reduced; or other threats, express or implied, intended or calculated to influence the political opinions or actions of its, their or his employees. Any person or persons, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and any person, whether acting in his individual capacity or as an officer or agent of any corporation so guilty of such misdemeanor shall be punished as hereinafter prescribed.

Legislation. Sec. 2366. Act 1891 § 4, cited under § 2363.

2367. Unlawful to discharge or promote employees to influence vote.

SEC. 232. It shall be unlawful for any corporation or any officer or agent of any corporation to influence or attempt to influence by force, violence or restraint or by inflicting or threatening to inflict any injury, damage, harm or loss, or by discharging from employment or promoting in employment, or by intimidation or otherwise in any manner whatever, to induce or compel any employe to vote or refrain from voting at any election provided by law, or to vote or refrain from voting for any particular person or persons at any such election. Any such corporation, or any officer or agent of such corporation, violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and be subject to the penalty hereinafter provided, and in addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this state.

Legislation. Sec. 2367. Act 1891 § 5, cited under § 2363.

2368. Candidates file statements of expenses incurred—Chairmen and secretaries of central committees file statement.

SEC. 233. Every candidate who is voted for at any public election held within this state shall, within thirty days after

such election, file as hereinafter provided, an itemized statement, showing, in detail, all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such money, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit, subscribed and sworn to by such candidate, setting forth, in substance, that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election. Candidates for office to be filled by the electors of the entire state, or any division or district thereof greater than a county, and candidates for either house of the general assembly, and for district judge, and for district attorney, shall file their statements in the office of the secretary of state; and candidates for town and city officers shall file their statements in the office of the town or city clerk, respectively, and candidates for county offices, and for all other offices not otherwise above expressly provided for, shall file their statements in the office of the clerk of the county wherein such election occurs. Within thirty days after each election, the chairman and secretary of state, county and city central committees of each and every political party presenting candidates, shall make and file a statement, under oath, setting forth in detail all sums of money received, from whom received, and to whom and for what purpose such money was paid by such committees during the preceding election. Certificates of state chairmen or secretaries shall be filed with the secretary of state, and for the county chairmen and secretaries with the clerk of the county, and by city chairmen and secretaries with the city clerk. Any person or persons who shall violate the provisions of this section shall be deemed guilty of a misdemeanor. Which certificates shall be preserved by the officers with whom they are filed until the next general election, and shall be open to the inspection of the public.

Legislation. Sec. 2368. Act 1891 § 6, cited under § 2363.

CITATIONS.

The provision as to time within which to file statement is directory merely.—*Gillett v. Peo.*, 13 A. 562, 59 P. 75.

2369. Unlawful to interfere with election official, ballot box, poll book, etc.

SEC. 234. Any person who, at any election provided by law in this state, shall interfere in any manner with any officer of such election in the discharge of his duty, or who shall induce any officer of any election, or officer whose duty it is to ascertain, announce or declare the result of any such election, or give or make any certificate, document or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same, or who shall take, carry away, conceal or remove any ballot or ballot box, poll book or other thing from the polling place, or from the possession of the person or persons authorized by law to have the custody thereof, or who aids, counsels, procures, advises or assists any person or persons to do any of the acts aforesaid, shall be guilty of a crime and shall be punished as hereinafter provided.

Legislation. Sec. 2369. Act 1891 § 7, cited under § 2363.

2370. Offender competent witness—Testimony not to be used against witness.

SEC. 235. A person offending against any provision of sections one, two or seven of this act, is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding or investigation in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony, accordingly, in bar of such an indictment or prosecution.

[Section 1 referred to is section 2363.]

[Section 2 referred to is section 2364.]

[Section 7 referred to is section 2369.]

Legislation. Sec. 2370. Act 1891 § 8, cited under § 2363.

2371. Penalties for offenses.

SEC. 236. Any person convicted of any of the crimes or offenses mentioned in sections one, two and seven of this act shall be punished by a fine of not more than one thousand dollars or by imprisonment in the penitentiary for not less than one nor more than five years, or by both such fine and imprisonment; and any person, corporation or agent of a corporation, guilty of any offense herein made a misdemeanor shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Any candidate for office who refuses or neglects to file the statement prescribed in section six of this act shall be deemed guilty of a misdemeanor, punishable as above provided, and shall also forfeit his office.

[Sections 1, 2, 6 and 7 above referred to are sections 2363, 2364, 2364a and 2369, respectively.]

Legislation. Sec. 2371. Act 1891 § 9, cited under § 2363.

CITATIONS.

It clearly appears from this section that the provision of sec. 2368 as to time within which to file statement is directory.—*Gillett v. Peo.*, 13 A. 561, 59 P. 75.

2372. Applicable to all elections.

SEC. 237. The provisions of this act shall extend so far as applicable to all elections provided by law, either general, special or primary.

Legislation. Sec. 2372. Act 1891 § 10, cited under § 2363.

2373. Penalty for exposing ballot—False statement—Interference with voter.

SEC. 238. A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, with an apparent intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere or attempt to interfere with any voter when inside said enclosed space, or when marking a

ballot, or who shall endeavor to induce any voter to vote or to show how he marked or has marked his ballot, shall be punished by a fine of not less than five nor more than one one hundred dollars. Any election judge or clerk shall report any person so doing to the district attorney for the county in which the election is held, whose duty it shall be to see that the offender is forthwith brought before the proper court.

Legislation. Sec. 2373. Act 1891 § 33, cited under § 2145.

2374. Penalty for destruction of supplies or hindering voter.

SEC. 239. Any person who shall, prior to an election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of this act, or who, during an election, shall wilfully deface, tear down, remove or destroy any card of instruction or sample ballot, printed or posted for the instruction of voters, or who shall, during an election, wilfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot, or shall wilfully hinder the voting of others, shall be punished by fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both fine and imprisonment.

Legislation. Sec. 2374. Act 1891 § 34, cited under § 2145.

2375. Penalty for destroying certificate of nomination—False endorsement.

SEC. 240. Any person who shall falsely mark or wilfully deface or destroy any certificate of nomination, or any part thereof, or any letter of acceptance, declination or resignation; or file any certificate of nomination, or letter of acceptance, declination or resignation, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination, or any part thereof, which has been duly filed; or forge any letter of acceptance, declination or resignation; or falsely make the official endorsement on any ballot, or wilfully destroy or deface any ballot or wilfully delay the delivery of any ballots, shall be punished by fine not exceeding one thousand dollars, or by im-

prisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Legislation. Sec. 2375. Act 1891 § 35, cited under § 2145.

**2376. Penalty for neglect of duty—Destruction of ballots—
Breaking seal on ballot.**

SEC. 241. Every public officer upon whom any duty is imposed by this act who violates his said duty, or who neglects or omits to perform the same, shall be punished, except as otherwise in this act specially provided, by imprisonment in the county jail for a term not exceeding one year, or by a fine of not less than one hundred dollars and not more than three thousand dollars, or by both such fine and imprisonment. Any person or officer having charge of official ballots who shall destroy or conceal or suppress them, except as in this act permitted, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years. Any person or officer who has undertaken to deliver official ballots to any city, town or county officer of election who neglects or refuses to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or by fine of not less than two hundred and fifty dollars and not more than one thousand dollars, or by both said fine and imprisonment. Any election officer or watcher who shall reveal to any other person the name of any candidate for whom a voter has voted, or who shall communicate to another his opinion, belief or impression as to how or for whom a voter has voted, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or by fine of not less than two hundred and fifty dollars nor more than one thousand dollars, or by both fine and imprisonment. Any official or person, except those authorized by law, who shall break or loosen a seal on a ballot with the intent to disclose or learn the number of such ballot, shall be guilty of a misdemeanor.

Legislation. Sec. 2376. Act 1891 § 36, cited under § 2145.

CITATIONS.

This section cited in considering the effect of the failure on the part of the clerk to make proper publication of nominations etc.—*Allen v. Glynn*, 17 C. 341, 29 P. 671.

2377. Electioneering—Removing ballot—Return of ballot to judges.

Sec. 242. No person shall do any electioneering on election day within any polling place or in any public street or room, or in a public manner, within one hundred feet of any polling place. No person shall remove any official ballot from the polling place before the closing of the polls. No person shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents, nor shall any person solicit the voter to show the same. No person, except a judge or a clerk of election, shall receive from any voter a ballot prepared for voting. No voter shall receive an official ballot from any other person than one of the judges or clerks of election having charge of the ballots, nor shall any person other than such election officer deliver an official ballot to such voter. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed upon any ballot prepared for voting other than the number of such voter on the poll list, to be placed thereon by the judge or clerk of election. Every voter who does not vote or deliver in the manner hereinbefore provided the ballots received by him from the election officers shall, before leaving the polling place or going outside the guard rail, return each such ballot to the officer from whom he received the same. Whoever shall violate any provision of this section shall be deemed guilty of a misdemeanor. But nothing herein contained shall prevent any person from receiving, delivering and voting an unofficial ballot in the contingency provided for in section twenty-two of this act.

[Section 22 referred to is section 2243.]

Legislation. Sec. 2377. Act 1891 § 37, cited under § 2145.

CITATIONS.

This section referred to in an election contest.—*Nicholls v. Barrick*, 27 C. 437, 62 P. 204.

2378. Unlawful to take liquor into polling place.

SEC. 243. It shall be unlawful for any person or any election judge or clerk to introduce into any polling place, or to use therein or to offer to another for use therein, at any time while any election is in progress or the result thereof being ascertained by the counting of the ballots, any intoxicating, malt, spirituous or vinous liquors. It shall be unlawful for any officer or board of officers of any county or any city or town, whether incorporated under general law or by special charter, who may at any time be by law charged with the duty of designating polling places for the holding of any general or special election therein, to select therefor a saloon or a room within the distance of fifty (50) feet (measured in a direct line) of any saloon or other place where any intoxicating, malt, vinous or spirituous liquors are usually sold, to be drank where sold.

Legislation. Sec. 2378. Act 1891 § 39, cited under § 2145. Saloons to be closed on election day. §§ 2385, 2386.

2379. Punishment of offenses—Witnesses.

SEC. 244. All acts, omissions and neglects of any person, official or corporation made an offense by the provisions of this act, and the punishment for which is not herein expressly designated, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment. Any person so offending against any provisions of this act is a competent witness against any other person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding or investigation in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

Legislation. Sec. 2379. Act 1891 § 42, cited under § 2145.

2380. Judge signing wrongfully—Penalty.

SEC. 245. Every judge of election or person acting as such, on any board of registry who shall wilfully set his name on the registry roll opposite the name of any voter registered on such list, knowing him to be not legally entitled to be registered upon such list, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than three hundred (300) dollars nor more than one thousand (1,000) dollars, or be imprisoned not less than thirty (30) days nor more than ninety (90) days, or may be punished by both such fine and imprisonment.

Legislation. Sec. 2380. G. L. § 1052. G. S. § 1275.

This offense was covered by the more general terms of R. S. p. 302 § 75.

2381. Penalty for making false affidavit.

SEC. 246. If any person shall make an affidavit, as provided in section one hundred and twenty-six of this act, for the purpose of causing the name of any person to be registered in any ward or precinct in this state, and shall in such affidavit state falsely the name of such person to be registered or the fact of his having resided in such precinct or ward a sufficient length of time to entitle him to be so registered, or the place of his actual habitation or residence, or the fact of his age or of his residence within a sufficient time to entitle him to be registered, the person so making a false affidavit shall be deemed guilty of a wilful and corrupt perjury, and, on conviction, shall be punished accordingly.

[Section 126 referred to is section 2380.]

Legislation. Sec. 2381. Act 1879 p. 57 § 1. G. S. § 1276, amending G. L. § 1052. The amendment was to correct the misrecital of § 125 when § 126 was the section intended.

2382. Penalty for procuring false registry.

SEC. 247. Every person who shall procure his own name, or the name of any other person, to be registered on the list of registered voters called the registry list, in any ward or voting precinct in this state in which any election is or may be by law

authorized to be held, and in which ward or precinct such person shall not be at the time of such registry entitled to be registered in such ward or voting precinct; or if any person shall procure or attempt to procure to be registered in any ward or voting precinct any fictitious name as the name of any person entitled to be registered in such ward or precinct, every person so procuring or attempting to procure such registry of the name of any person not by law entitled to be registered, or any fictitious name in manner aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred (200) dollars nor more than five hundred (500) dollars, or be imprisoned not less than ten (10) nor more than forty (40) days for each and every offense, or may be punished by both such fine and imprisonment.

Legislation. Sec. 2382. G. L. § 1054. G. S. § 1277. Framed on Act 1874 p. 114 §§ 21, 22. Sections 19, 20 Act 1874 p. 113 were further penal sections under the territorial registration law.

2383. Penalty for adding names to completed registry.

SEC. 248. The registry of voters' names shall be completed on the evening next preceding each and every election appointed by law to be held in each and every precinct, and no name shall be added to the registry list in any ward or precinct after the close of the registration on the day preceding such election; and in case any judge of election or person acting as member of any board of registry shall wilfully and knowingly add any name or names of any person or any fictitious or false name to the list of registered voters in any ward or voting precinct after the close of the registry of voters' names, on the next day preceding any election in such ward or voting precinct according to law, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than two hundred (200) dollars nor more than five hundred (500) dollars for each and every offense.

Legislation. Sec. 2383. G. L. § 1055. G. S. § 1278. Framed on Act 1874 p. 115 § 23.

2384. Fines paid for use of school fund.

SEC. 249. All fines or forfeitures collected under the provisions of this act shall be paid to the county treasurer of the county wherein the offense was committed for the benefit of the school fund of such county.

Legislation. Sec. 2384. G. L. § 1056. G. S. § 1279.

2385. Closing saloons—Penalty for selling liquors.

SEC. 250. No saloon or other place at which intoxicating liquors are sold shall be open during the day of any general or special election in this state. Any saloon keeper or other person who shall sell, barter or give away any intoxicating liquors during the day of any general or special election before the polls are closed on such day shall, for each and every offense, be liable to pay a fine of fifty dollars, or be imprisoned twenty days, or both, at the discretion of the court in which the case may be tried.

Legislation. Sec. 2385. G. L. § 996. G. S. § 1220.

2386. Selling liquors between sunrise and sunset on election day.

SEC. 251. If any inn-keeper of any hotel, tavern, saloon or other place, whether licensed to vend spirituous, vinous, fermented or malt liquors or not, or any other person, shall barter, sell or give away to any person or persons any spirituous, vinous, fermented or malt liquors between the hours of sunrise and sunset on the day of any general election in this state, or within any incorporated city in this state, between the hours above named, on the day of the election of the mayor thereof, shall, upon conviction thereof before any justice of the peace or court of competent jurisdiction, forfeit and pay a fine of not less than ten nor more than one hundred dollars for the first offense, and for a second offense a fine of not less than fifty nor more than two hundred dollars.

[The above section does not apply to wholesale dealers. Section 1810.]

Legislation. Sec. 2386. R. S. p. 254 § 247. G. L. § 851. G. S. § 856.

2387. Personating voter—Penalty.

SEC. 252. Any person who shall falsely personate any voter and vote under the name of such voter shall, upon conviction, be punished by confinement and hard labor in the state penitentiary not exceeding three years.

Legislation. Sec. 2387. G. L. § 998. G. S. § 1222.

2388. False swearing—Penalty.

SEC. 253. If any elector, challenged as unqualified, shall be guilty of wilful and corrupt false swearing or affirmation by any oath or affirmation prescribed by this act, such person shall be adjudged guilty of wilful and corrupt perjury.

Legislation. Sec. 2388. G. L. § 999. G. S. § 1223.

Perjury in election matters was covered by R. S. p. 288 § 27.

The territorial act of 1874 was perhaps the most sweeping bill ever passed in the attempt to penalize conduct in association with elections. Its § 7 p. 118 is an interminable enumeration of acts which were to be considered as bribery. Its § 8 forbade the carriage of voters to the polls by teams. Its §§ 9 and 10 prohibited the hire of newspapers to advocate or oppose any candidate. § 11 consists of a single sentence covering more than a page, itemizing what is to be considered bribery. § 12 is directed against contributions to an election fund. Promise to appoint to office is forbidden by § 13 p. 124, and § 14 adds disfranchisement as a further punishment. The next three sections were directed against corporate and especially railroad interference.

The further sections of the act provided for special practice to enforce it and its final paragraph is a form of oath to the officer elected which literally construed no candidate could truthfully make. The whole Act was repealed by G. L. § 1057.

2389. Suborning perjury—Penalty.

SEC. 254. Every person who shall wilfully and corruptly procure any person to swear or affirm falsely as aforesaid shall be adjudged guilty of subornation of perjury, and shall, upon conviction thereof, suffer the punishment provided by law in cases of wilful and corrupt perjury.

[Penalty for perjury. Section 1716.]

Legislation. Sec. 2389. G. L. § 1000. G. S. § 1224.

2390. Punishment for neglect of officers—Misconduct.

SEC. 255. If any officer on whom any duty is enjoined by this act shall be guilty of any wilful neglect of such duty, or of

any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, the fine in no case to exceed the sum of five hundred dollars, nor the imprisonment the term of one year.

Legislation. Sec. 2390. G. L. § 1001. G. S. § 1225. Neglect of duty and other offenses of election officers were covered by R. S. p. 291 §§ 38-41.

2391. Judge admitting illegal vote—Penalty.

SEC. 256. In case any judge of election shall knowingly and wilfully permit any person to vote at any election who is not entitled to vote thereat, the said judge so offending shall, on conviction thereof be adjudged guilty of a misdemeanor, and shall be sentenced to pay a fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months.

Legislation. Sec. 2391. G. L. § 1002. G. S. § 1226.

2392. Bribing or influencing vote—Menace—Penalty.

SEC. 257. If any person shall, by bribery, menace or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any voter of this state, in giving his vote or ballot, or deter him from giving the same, or disturb or hinder him in the free exercise of the right of suffrage at any election in this state, or shall fraudulently or deceitfully change or alter a ballot, or cause any other deceit to be practiced with intent fraudulently to induce such elector to deposit the same as his vote, and thereby have the same thrown out and not counted, every person so offending against the provisions of this act shall be deemed guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding six months.

[See section 2363 to 2367.]

Legislation. Sec. 2392. G. L. § 1003. G. S. § 1227. This offense and also the offense of accepting a bribe were covered by Act 1874 p. 116 § 3. The text abrogates § 2362.

CITATIONS.

This section operates to repeal sec. 2362 disqualifying voters.
—*Peo. v. Goddard*, 8 C. 434, 7 P. 302.

2393. Voting in wrong wards—Penalty.

SEC. 258. Any person who, at any general or special election, or any city or charter election, shall knowingly vote or offer to vote in any election precinct or ward in which he does not reside shall, on conviction, be adjudged guilty of a misdemeanor, and punishable by fine not exceeding two hundred dollars, or by imprisonment not exceeding six months.

Legislation. Sec. 2393. G. L. § 1004. G. S. § 1228. Act of 1874 p. 125 § 15 was the territorial Act to the same effect.

2394. Receiving bribe—Penalty.

SEC. 259. If any elector shall accept or receive from any person whomsoever any money or other valuable thing for and in consideration of his voting for or against any person or persons who are candidates at any election in this state, he shall be deemed guilty of a misdemeanor, and punishable by a fine not exceeding two hundred dollars, or by imprisonment not exceeding six months.

Legislation. Sec. 2394. G. L. § 1005. G. S. § 1229. See note to § 2392.

2395. Mutilating, taking away or destroying poll book—Penalty.

SEC. 260. If any person shall mutilate or erase any name, figure or word in a poll book, taken or kept at any election; or if any person shall take away such poll book from the place where it has been deposited for safe keeping with an intention to destroy the same, or to procure or prevent the election of any person; or if any person shall destroy any poll book so taken and kept at any election, he or she shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not exceeding five hundred dollars or imprisoned not exceeding sixty days in the county jail.

Legislation. Sec. 2395. Act 1861 p. 82 § 42. R. S. p. 292 § 42. G. L. § 1006. G. S. § 1230.

2396. Frauds at primaries or conventions.

SEC. 261. Any person at any caucus, convention, or primary election, called by whatever authority, for the purpose of nominat-

ing public officers, to be voted for at any election held under the laws of this state, or under the ordinances of any city or town, or both, or at any caucus, convention or primary election, held for the purpose of choosing delegates to any convention to nominate any of the aforesaid officers, who shall:

First—Fraudulently vote or attempt to vote more than once; or

Second—Shall knowingly hand in two or more tickets deceitfully folded together; or,

Third—Shall add, or attempt to add, any illegal ballot to the ballots that have been cast; or,

Fourth—Shall knowingly procure, aid, counsel or advise another to vote or attempt to vote fraudulently, illegally or corruptly; or,

Fifth—Shall falsely personate any voter and vote or attempt to vote under his name, or under an assumed name; or,

Sixth—Shall fraudulently procure, aid, abet, or encourage, directly or indirectly, any person to attempt to falsely personate any voter, or to vote under an assumed name; or,

Seventh—Shall, by bribery, menace, or any other corrupt, unlawful, or fraudulent means, attempt to influence any voter in the casting of his vote; or,

Eighth—Shall receive any money or valuable thing, or the promise of either, for casting his vote for or against any person, or persons, measure or measures, or shall offer his vote for or against any person or persons, measure or measures, in consideration of money or other valuable thing, or the promise of either; in every such instance such person shall be guilty of a misdemeanor, and punished as provided by this act.

Legislation. Sec. 2396. Act 1887 p. 347 § 1, entitled:

AN ACT

To Prevent Frauds in the Nominating of Public Officers.

CITATIONS.

The act of 1887 was submitted to the supreme court upon the question of its constitutionality and was held to be a proper subject of legislation.—*Nominations to Public Office*, 9 C. 631, 21 P. 474.

CITATIONS CONTINUED.

The holding of this court in 9 C. 631 as to the act of 1887. gave a judicial decision limiting somewhat the phrase "all elections" as used in the constitution.—*Valverde v. Shattuck*, 19 C. 112, 34 P. 949.

2397. Bribery at primaries or conventions.

SEC. 262. Any person at any caucus, convention, or primary election, called by whatever authority, for the purpose of nominating public officers, to be voted for at any election held under the laws of this state, or under the ordinances of any city or town, or both, or at any caucus, convention or primary election, held for the purpose of choosing delegates to any convention to nominate any of the officers aforesaid, who shall, with the intent to promote the election of himself, or any other person, at such caucus, convention or primary election; *First*, Furnish any public entertainment of any kind to any elector, or pay for, procure or engage to pay for, or in any way become liable for such entertainment or, *Second*, Shall engage directly or indirectly to pay or deliver any money or property for any purpose, intended to promote the election of any person at any such caucus, convention, or primary election, except for the purpose of printing tickets or hand bills, and other papers, or for the purpose of holding public meetings for the discussing of public questions; in all such cases the person so offending shall be deemed guilty of a misdemeanor, and punished as provided for in this act.

Legislation. Sec. 2397. Act 1887 § 2, cited under § 2396.

2398. Members of another party may not vote.

SEC. 263. Any person at any such caucus, convention, or primary election as is described in this act, who is at the time a member in good faith of a different political party than the one holding such caucus, convention, or primary election, and who shall fraudulently participate in and vote in such caucus, convention, or primary election, shall be deemed guilty of a misdemeanor, and punished as provided in this act. The question of the good faith of the voter shall be left as a question of fact to the jury.

Legislation. Sec. 2398. Act 1887 § 3, cited under § 2396.

2399. Penalty.

SEC. 264. Any person convicted of a misdemeanor under this act shall be fined by the court, in a sum not less than one hundred dollars, and not exceeding one thousand dollars, or shall be imprisoned in the county jail not less than thirty days and not more than nine months, or by both such fine and imprisonment.

Legislation. Sec. 2399. Act 1887 § 4, cited under § 2396.

2400. Frauds by primary or convention officials—Penalty.

SEC. 265. Any person in authority at any caucus, convention, or primary election, as described in this act, as judge of election, clerk of election, or otherwise, who shall; *First*, In any manner, dishonestly, or corruptly, or fraudulently perform any act devolving on him by virtue of the position of trust which he fills; or, *Second*, Shall knowingly aid or abet any other person to do any fraudulent, dishonest, or corrupt act or thing in reference to the carrying on of such caucus, convention or primary election, or the ascertaining, or promulgating of its true will, shall, in each case, be guilty of a felony, and may be punished by a fine of not less than three hundred dollars, nor more than two thousand dollars, or, by imprisonment in the penitentiary for a term not to exceed two years, or by both such fine and imprisonment.

Legislation. Sec. 2400. Act 1887 § 5, cited under § 2396.

2401. Employers not to influence employes.

SEC. 266. Incorporated employers of help shall not, in any manner, attempt to influence or control the action of their employes in casting their votes for or against any person or persons, measure or measures, at any caucus, convention, or primary election described in this act. The act of any boss, master workman, or one acting in authority among such employes, with the consent of the employer, shall be construed to be the act of such employer. Any employer violating this section shall be deemed guilty of a misdemeanor, and fined in a sum not less than five hundred nor more than five thousand dollars. Any number of

distinct violations of this section occurring at the same caucus, convention or primary election may be charged in one indictment in different counts, and all tried in the same action, the jury specifying the counts, if any, on which the defendant is found guilty.

Legislation. Sec. 2401. Act 1887 § 6, cited under § 2396.

VI. CAMPAIGN EXPENSES.

Section.

2401-A. State pays campaign expenses.

2401-B. Bond of state chairman—Report to treasurer.

2401-C. Contributions by third party prohibited.

2401-D. Penalty.

2401-A. State pays campaign expenses.

Sec. 267. That the expenses of conducting campaigns to elect state, district and county officers at general elections shall be paid only by the state and by the candidates for office at such elections in the following manner: Within ten days after the nomination of candidates for state officers by a political party, the state treasurer shall pay to the state chairman of that political party for campaign purposes, a sum equal to twenty-five (25) cents for each vote cast at the last preceding general election for the nominee for governor of that political party. Such state chairman out of such sum shall, within ten days after the nomination by that political party of candidates for county officers in each county, transmit to the county chairman of such political party a sum equal to twelve and one-half (12½) cents for each vote cast in that county at the last preceding general election for the nominee for governor of that political party for campaign purposes; that each candidate for a state, district or county office may contribute, respectively, to the state, district or county committee for campaign purposes and for his own campaign expenses, a sum not exceeding forty (40) per cent. of the first year's salary of such office, or if the officer is by law entitled to all the fees collected by such office, pay a sum not exceeding twenty-five (25)

per cent. of the fees of such office for the calendar year preceding the year in which such nomination is made.

Legislation. Sec. 2401A. Act 1909 p. 303 § 1, entitled:

AN ACT

Concerning Campaign Expenses of Political Parties and Contributing Thereto.

2401-B. Bond of state chairman—Report to treasurer.

SEC. 268. The state chairman of each political party shall, before he receives such money from the state treasurer, execute a bond in the amount he so received with good and sufficient sureties to be approved by the state treasurer or governor, conditioned that he will cause one-half of the said moneys so received to be expended for legitimate campaign expenses and the other half to be distributed to the county chairmen of his party, as above provided and within 30 days after the election he shall make a report under oath to the state treasurer, showing in detail his expenditures of such fund for campaign purposes.

Legislation. Sec. 2401B. Act 1909 § 2, cited under § 2401A.

2401-C. Contributions by third parties prohibited.

SEC. 269. That any person or corporation, except as above provided, who shall directly or indirectly, contribute any money or property of any kind or character to or for any candidate for any office to be voted for at any general election, or to or for any state or county committee of any political party, or to or for the chairman thereof, or to or for any member or officer thereof, shall be deemed guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for a term of not more than two years, or be fined not exceeding five thousand dollars (\$5,000), or both.

Legislation. Sec. 2401C. Act 1909 § 3, cited under § 2401A.

2401-D. Penalty.

SEC. 270. That the chairman of any state or county committee of any political party, or any member or officer of such

committee or any candidate, for any office to be voted for at any general election who shall, except as above provided, directly or indirectly receive for campaign expenses any contribution of money or property of any kind or character, shall be deemed guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for a term of not more than two (2) years or be fined not exceeding five thousand dollars (\$5,000), or both.

Legislation. Sec. 2401D. Act 1909 § 4, cited under § 2401A.

VII. PRIMARY ELECTIONS.

Section.

- 2401-E. Nominations by primary elections—Assembly nominations.
- 2401-F. Separate tickets—Political party and assembly defined.
- 2401-G. When act effective—Direct primary election, when and where held.
- 2401-H. Candidates, how placed on ballot.
- 2401-J. Signatures to petitions.
- 2401-K. Petitions, where and when filed.
- 2401-L. Secretary transmit list of candidates to clerks—Notice.
- 2401-M. Publication in two newspapers.
- 2401-N. Tickets uniform—City elections—Form of ballot.
- 2401-O. Party ballots fastened together.
- 2401-P. Qualifications of voters—Spoiled ballots—Voting—Challenge.
- 2401-Q. Defective ballots—Intent of voter.
- 2401-R. General election laws apply.
- 2401-S. Appointment of judges and clerks.
- 2401-T. Chairman certify names of watchers and judges—Fees.
- 2401-U. Secretary of state provide copies of law.
- 2401-V. When polls open and close.
- 2401-W. Duties of judges and clerks.
- 2401-X. Tally sheets—Form.
- 2401-Y. General election laws apply.
- 2401-Z. Election of precinct officers — Term — Vacancies — Central committee.
- 2401-AA. State platform, how formulated.
- 2401-BB. Party nominees, how chosen.
- 2401-CC. State board of canvassers—Meeting—Statement—Ties—Vacancies.
- 2401-DD. Petition to court to correct errors and omissions.
- 2401-EE. Independent candidates, nomination of.
- 2401-FF. Secretary and attorney general prepare forms.
- 2401-GG. Campaign expenses—Limit of contributions.
- 2401-HH. Candidates file statement.

VII. ELECTIONS.

Continued.

Section.

- 2401-JJ. Penalty for not filing statement.
 - 2401-KK. Provisions of statutes apply.
 - 2401-LL. Forgery to nomination paper.
 - 2401-MM. Candidates for U. S. Senator.
 - 2401-NN. Legislative candidate—Statement—Pledge.
 - 2401-OO. Committee contests.
 - 2401-PP. Filings, public records.
 - 2401-QQ. Withdrawal from nomination.
 - 2401-RR. Death of candidate.
 - 2401-SS. Certified lists of registration.
 - 2401-TT. Bribery of voter—Penalty.
 - 2401-UU. Election offenses—Punishment.
 - 2401-VV. Misuse of nomination papers.
 - 2401-WW. Neglect of duty by officers.
 - 2401-XX. Election contests.
 - 2401-YY. Election expenses.
 - 2401-ZZ. Laws applicable to act.
 - 2401-AAA. Masculine pronoun includes feminine.
 - 2401-BBB. County clerk defined.
 - 2401-CCC. Duties of election commissioners.
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2401-E. Nominations by primary elections—Assembly nominations.

Sec. 271. That all political parties shall make all nominations for candidates for the United States senate, members of the house of representatives in congress, all elective state, district, city, county, city and county, ward and precinct offices, members of the senate and house of representatives of the state of Colorado, by direct primary elections, and the secretary of state and county and city clerks in the several counties in Colorado are prohibited from placing on the official election ballot the name of any person as a candidate of any political party not nominated in accordance with the provisions of this act; *Provided*, That this act, except as hereinafter specifically provided for, shall not be held to apply to nominations for special elections for filling vacancies for unexpired terms, and shall not be held to refer to nominations to municipal offices of any "Incorporated Town," so denominated under the statutes of the state of Colorado, and shall not be held to apply

to the selection of delegates to any national political assemblies or to the nomination of presidential electors; *And, Provided, further,* That all such last named nominations by political parties shall be made by assemblies of the several political parties, and delegates to assemblies of political parties shall be selected as specified by the rules and regulations of the respective political parties participating therein; *And, provided, further,* That the certification of the due and proper nomination of candidates for presidential electors and for the several offices above referred to in "Incorporated Towns," and to fill vacancies shall be as respectively provided by law.

Legislation. Sec. 2401-E. § 1 of Act of 1910 p. 15, entitled:

AN ACT

Concerning Nominations of Candidates for Public Office and for Political Party Positions, and Concerning and Regulating the Government of Political Parties and Political Organizations, and Concerning Elections in the State of Colorado; and To Provide for Punishing Violations of the Provisions of This Act, and To Repeal all Acts and Parts of Acts In Conflict With the Provisions of This Act.

2401-F. Separate tickets—Political party and assembly defined.

SEC. 272. Any political organization which, at the general election last preceding any primary election provided for in this act, was represented on the official ballot by either regular party candidates or by individual nominees only may, upon complying with the provisions of this act have a separate primary election ticket as a political party, if its candidate for governor received ten per cent. of the total vote cast at such last preceding general election in this state; and any such political organization shall be a "political party," within the meaning of the term as used in this act. An assembly of a political party within the meaning of this act is an organized assemblage of voters or delegates representing such political party, organized in accordance with the rules and regulations of such political party.

Legislation. Sec. 2401-F. § 2 of Act of 1910, cited under § 2401-E.

2401-G. When act effective—Direct primary election, when and where held.

SEC. 273. This act shall be, and become effective for the nomination of candidates for election in November, 1912. A direct primary election to nominate candidates to be voted for at the general election in November, 1912, shall be held at the regular polling places in each precinct on the second Tuesday of September, 1912, and biennially thereafter, for the nomination of candidates to be voted for at the succeeding general election. Every direct primary election other than the September primary election shall be held four weeks before the election for which candidates are to be nominated at such direct primary election.

Legislation. Sec. 2401-G. § 3 of Act of 1910, cited under § 2401-E.

2401-H. Candidates, how placed on ballot.

SEC. 274. All candidates for nominations to be made at any such primary election shall be placed on the direct primary ballot by petition or certificate of designation by assembly, as hereinafter provided.

No such petition shall contain the name of more than one person for the same office. Every such petition shall state the name of the office for which such person is a candidate, his name, postoffice, residence, and street number of residence, and place of business, if any, and shall designate in not more than three words the name of the political party which such candidate represents. All such assembly candidates for nomination by a political party shall be certified by the presiding officer and secretary of the assembly of the political party making the same, and shall be filed within the time, and with the same officer with whom nominations by petition for like offices are to be filed, as in this act provided; and such presiding officer and secretary so certifying to said candidate for nomination shall add to their signature their respective places of residence and postoffice address, and make oath by affidavit thereto attached before an officer qualified to acknowledge the same that affiants are such officers of such assembly and that the statements contained in such certificate are true to the best of their knowledge and belief.

Assembly designations of candidates for nomination on the direct primary ballot may be made by assemblies of the several political parties and delegates to such assemblies of political parties selected as specified by the rules and regulations of the respective political parties as now provided for the holding of assemblies, or as hereafter may be provided by such political parties for the holding of assemblies by the respective political parties participating therein and as follows:

Any such assembly shall take only one ballot upon candidates for each office to be filled at the ensuing election and within the jurisdiction of such assembly.

Every such candidate receiving ten per cent., or more, of the votes of the duly accredited delegates to such assembly for any office to be voted upon at such ensuing election, shall be certified as hereinbefore provided, and shall be placed upon the direct primary ballot as a candidate for such office before the ensuing primary election.

All candidates designated and certified by assembly for a particular office shall be placed on the direct primary ballot in the order of the vote received by each such candidate; that is to say, the candidate receiving the highest vote shall be placed first in order on such direct primary ballot, followed by the candidate receiving the next highest vote, and so on until all of the candidates so designated by such assembly shall have been placed on such ballot; *Provided*, That no assembly shall in any wise declare that any candidate voted for, has received the nomination of any such assembly; *And, provided, further*, That any candidate so designated by assembly shall file his written acceptance of the same with the officer with whom certificates and petitions are herein provided to be filed, within seven days after the adjournment of such assembly. All candidates by petition for any particular office shall follow assembly candidates and shall be placed on the direct primary ballot in alphabetical order.

Legislation. Sec. 2401-H. § 4 of Act of 1910, cited under § 2401-E.

2401-J. Signatures to petitions.

SEC. 275. Every such petition in the case of a candidate for

any national, state or district office greater than a county, shall be signed by not less than three hundred duly qualified electors, resident within the state or district for which the officer is to be elected, and in the case of a candidate for any other elective office, shall be signed by not less than one hundred duly qualified electors, resident within the political subdivision for which the officer is to be elected; *Provided, however,* That no such petition shall require more signers thereto than ten per cent. of the gubernatorial votes cast by such political party at the last preceding election in such political subdivision. The electors supporting such petition shall write opposite their names their respective addresses, and election precincts wherein resident as such electors, and shall make oath by affidavit thereto attached, before any officer authorized to administer the same, to the truth thereof, and that each such candidate is placed in nomination on behalf of the political party named in the petition, and is affiliated with the principles thereof; that affiants intend to vote for such candidate at the ensuing direct primary election, and that affiants have not signed any other petition for any other candidate for the same office designated by such petition. Such petition may consist of one or more sheets, to be fastened together in the form of one petition, but each sheet shall contain the same heading, and the affidavit of the subscribing electors shall be endorsed on the sheet on which their names shall be signed. Every such petition before the same is filed with the proper officer as herein designated, shall have endorsed thereon or thereto appended in writing, either on the first or last sheet of said petition, the acceptance of such candidate of such nomination by acknowledgment before any officer authorized to take acknowledgments.

Legislation. Sec. 2401-J. § 5 of Act of 1910, cited under § 2401-E.

2401-K. Petitions, where and when filed.

SEC. 276. Every such petition shall, in the case of a candidate for any national, state or district office greater than a county, be filed in the office of the secretary of state, and in the case of a candidate for any other elective office, other than municipal or city, in the office of the county clerk wherein such candidate is

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placed in nomination, not more than sixty days and not less than thirty days prior to the ensuing direct primary election, and in the case of a municipal or city candidate, in the office of the municipal or city clerk, not more than thirty days and not less than twenty days prior to the ensuing direct primary election.

Legislation. Sec. 2401-K. § 6 of Act of 1910, cited under § 2401-E.

2401-L. Secretary transmit list of candidates to clerks—Notice.

SEC. 277. At least twenty days before any September direct primary election, the secretary of state shall transmit to each county clerk a certified list of each and every person entitled to be voted for at such primary election, and the office for which such person is a candidate, together with the other details mentioned in the nomination papers filed in the office of the secretary of state. Each county clerk shall, at least ten days before the September direct primary election, publish once in a condensed form under the proper party designation and under the title of each office, the names and addresses of all persons for whom nomination papers have been filed, insofar as the same shall affect the electors of his county, giving the date of the direct primary election, the hours during which the polls will be open, and reciting that the said primary election will be held in the lawful polling places designated in each precinct, and shall cause to be posted copies of such notice in at least two public places in all rural precincts in his county.

Legislation. Sec. 2401-L. § 7 of Act of 1910, cited under § 2401-E.

2401-M. Publication in two newspapers.

SEC. 278. Any publication required in this act shall be made once in two newspapers, if such there be, of general circulation, published in each county or city where such direct primary elections are to be held, representing the two political parties that cast respectively the largest and the next largest vote in such city or county at the last preceding general election .

Legislation. Sec. 2401-M. § 8 of Act of 1910, cited under § 2401-E.

2401-N. Tickets uniform—City elections—Form of ballot.

SEC. 279. The method of voting at such direct primary election shall be by ballot, as herein provided.

Not later than ten days before the September direct primary election, the county clerk shall group all the candidates for each party by themselves and shall prepare at once in writing a separate sample ballot for each party for public inspection and shall forthwith proceed to have the primary election ballots printed in the following manner:

All tickets shall be uniform in color and size, shall be white and printed in black ink. Across the head of each ballot shall be printed in plain black type, "OFFICIAL DIRECT PRIMARY ELECTION BALLOT." On the next line shall be printed the name of the political party, and below that the precinct, ward, city and county in which the ballot is to be used. Then shall follow the words, "To Vote for a Person Mark a Cross (X) in the First Square at the Right of the Name of the Person For Whom You Desire to Vote." Beginning at the top of the left hand column at the left of the line in black type, shall appear the designated office for which the respective names following are the names of candidates, and to the extreme right of the same line the words, "Vote For," then the words, "One," "Two," or a spelled number designating how many persons under that head are to be voted for.

Following this shall come the name of each candidate for that office, enclosed in a light-faced rule, with a square to the right of said name, said square being separated by a heavy, black-faced rule, the parallel rules containing the names and the squares to be one-sixth of an inch apart and not more than two and one-sixth inches long over all, and following the names of all the candidates for any particular office shall be a blank space or spaces, wherein the voter may write the name or names of one or more candidates according to the number of candidates to be nominated for such office, for which the voter is entitled to vote. Each position, with the names of the candidates for that office shall be separated from the following one by a black-faced rule, to separate each position clearly. The positions shall be arranged as follows, insofar as selections are to be made or preferences indicated in

such county under the provisions of this act: First, candidates for United States senator; next, congressional candidates; next, state candidates; next, legislative candidates; next, other district candidates greater than a county; next, county candidates; next, precinct candidates; next, candidates for precinct members of the party committees of the several parties. The names of the candidates for each office upon the ballot and under the heading designating each official position upon the ballot to be used in voting, shall be arranged as provided in section 4 of this act. A black space two inches square shall be printed on the face of the ballot in the lower, left-hand corner of each ticket of the ballot. There shall be no other printing or distinguishing marks on the ballot except as in this act specifically provided. Sample ballots shall be in the same form as the official ballot, but upon colored paper.

In city or municipal elections, it shall be the duty of the city or municipal clerk to prepare the ballots and arrange the positions of the offices on such ballots, commencing with the office of mayor, using his reasonable discretion as to such arrangement. The duties provided for in this act to be performed by the county clerk with reference to candidates for county and district offices or either of them, shall in like manner be performed by the city or municipal clerk in each city or municipality, with reference to the preparation of ballots and all other matters connected with direct primary election for candidates for city or municipal offices.

The form of ballot shall be substantially as follows: "OFFICIAL DIRECT PRIMARY ELECTION BALLOT."

.....PARTY. (DESIGNATION OF PARTY.)

PrecinctWard CityCounty.

To vote for a person mark a cross (X) in the first square at the right of the name of the person for whom you desire to vote.

United States Senator	Vote for one.	Representative in Con- gress.....District	Vote for one.
John Doe		John Doe	
John Doe		John Doe	
John Doe		John Doe	
Governor	Vote for one.	State Auditor	Vote for one.
John Doe		John Doe	
John Doe		John Doe	
John Doe		John Doe	
Representative to Gen- eral Assembly..... District	Vote for	Regents of State University	Vote for two.
John Doe		John Doe	
John Doe		R. Roe	
		John Doe	
		R. Roe	
County Clerk and Recorder	Vote for one.	Constable....Precinct	Vote for one
John Doe			
John Doe			
John Doe			
County Superintendent of Schools	Vote for one.	Precinct Commit- man.....Precinct	Vote for two.
Mary Doe			

When offices other than those given in the form above
to be filled at the coming election, the officer preparing the

shall use substantially the above form, putting the proper designation of the office in the space as above, and the names of the candidates therefor under the same, as indicated.

Legislation. Sec. 2401-N. § 9 of Act of 1910, cited under § 2401-E.

2401-O. Party ballots fastened together.

SEC. 280. Each political party entitled to participate in any direct primary election shall have a separate party ticket and all such party tickets shall have a perforated stub at the top thereof, not less than one inch in width, and the several tickets of each such political party shall be securely fastened together at the top and folded by one of the judges of election prior to delivery thereof by the voter. The direct primary election of all political parties shall be held at the same time and at the same polling places and shall be conducted by the same election officials.

Legislation. Sec. 2401-O. § 10 of Act of 1910, cited under § 2401-E.

2401-P. Qualifications of voters—Spoiled ballots—Voting—Challenge.

SEC. 281. Every person possessing the constitutional qualifications of a voter, over the age of twenty-one years, a citizen of the United States, and who shall have resided in the state one year immediately preceding the ensuing election at which such person may legally vote, and who shall have resided in the county ninety days, in the city or town thirty days, and in the ward or precinct ten days next preceding such primary election, shall be entitled to vote thereat; *Provided*, That every such voter shall also be properly registered, if such registration shall be required by law for primary elections. Each voter desiring to vote at said primary election shall have the right to receive a ballot made up as aforesaid, and upon receiving said ballot the voter shall retire to one of the booths provided for such primary election and without undue delay, mark the respective party ballot desired to be voted by

him, and shall then return the party ballot to be voted, to one of the judges of election by whom the same shall be numbered by writing, in the order in which it shall be received, the number thereof, on the opposite side of the black square aforesaid, and the corner whereof shall be turned and pasted down so that such number shall be concealed by said black square. Immediately thereafter said party ballot shall be by the voter deposited in the ballot box provided for that purpose, in the presence of the election officers. The remaining tickets attached together shall be folded in like manner by the voter, who shall thereupon without leaving the polling place deposit the remaining tickets in a separate ballot box to be marked and designated as the Blank Ballot Box. In the event of any such ballot being spoiled, the voter shall be entitled to receive additional ballots as provided by law for general elections. The voter shall designate his choice of candidates on his party ballot by marking a cross in each of the small squares at the right of the names of candidates for whom he desires to vote, and shall not vote for more candidates for each office than are to be elected thereto at the election to follow the direct primary election, as indicated on the said ballot at the right of each office for which candidates are to be elected. Any voter instead of voting for a candidate whose name is printed on his party ballot, shall be entitled to vote for any other eligible person who is a member of his political party, in lieu of such candidate, by writing the name of such person in the blank space immediately following the printed names of candidates for such office; *Provided, further,* That in no case shall the voter write on his party ballot the name of any candidate appearing on any other party ballot. Immediately after the ballots voted shall have been counted and certified to by the clerks and judges as herein provided, said clerks and judges shall without examination destroy the tickets deposited in the blank ballot box. If such voter is challenged he shall be required to make oath or affirm as follows: "I do hereby solemnly swear (or affirm) that I am a qualified voter, that I am a member of and affiliated with one of the political parties represented by ballot at this primary election, and that I will at this election vote only under the ballot and only for the candidates of the political party of which I am a member and with which I am affili-

ated." Said oath shall be administered to one or more voters at the same time.

Legislation. Sec. 2401-P. § 11 of Act of 1910, cited under § 2401-E.

2401-Q. Defective ballots—Intent of voter.

SEC. 282. If it is impossible to determine the choice of any voter for any nomination to be made, his ballot shall not be counted for such office; *Provided*, That a defective or imperfect cross on any ballot in a proper place shall be counted, if there be no other mark or cross in ink on such ballot indicating an intention to vote for some person or persons other than those indicated by the first mentioned defective cross or mark for some other candidate for the same office. If an imperfect cross or mark in ink be found near the name of a candidate, which cross or mark appears to have been made with intent to designate the candidate so marked as the one voted for, such ballot shall not be rejected if the intent of the voter to designate the person for whom he wished to vote can be reasonably gathered therefrom.

Legislation. Sec. 2401-Q. § 12 of Act of 1910, cited under § 2401-E.

2401-R. General election laws apply.

SEC. 283. Except as herein otherwise provided all direct primary elections shall be conducted the same as general elections under the general election laws of the state of Colorado, as far as the provisions thereof are applicable, and the election officers for such primary elections shall have the same powers and shall perform the same duties as those provided by law for general elections.

Legislation. Sec. 2401-R. § 13 of Act of 1910, cited under § 2401-E.

2401-S. Appointment of judges and clerks.

SEC. 284. Judges and clerks of direct primary elections shall be appointed and designated in the manner provided for the con-

duct of general elections under the laws of the state of Colorado, and the judges of direct primary elections shall in all cases be the registrars of elections and the regularly appointed election judges for general elections under the laws of the state of Colorado.

Legislation. Sec. 2401-S. § 14 of Act of 1910, cited under § 2401-E.

**2401-T. Chairman certify names of watchers to judges—
Fees.**

SEC. 285. Each political party participating in a direct primary election under the provisions of this act shall be entitled to have one of its members serve as watcher of such election in each voting precinct in the city or county where such primary election shall be held; *Provided*, That the chairman of the county or city committee of such political party shall certify the names of the persons so selected to the judges of election in the several precincts, and such persons shall be entitled to enter into the polling places and to witness the casting and counting of the ballots at such primary election; *And, provided, further*, That any and all judges of election who shall refuse to allow any duly appointed watcher as herein provided to act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by confinement in the county jail, not less than thirty days nor more than six months.

The same fees shall be allowed and paid from the public funds for the services of anyone so serving as a judge, or clerk of direct primary elections as is provided by law for such services for general elections.

Legislation. Sec. 2401-T. § 15 of Act of 1910, cited under § 2401-E.

2401-U. Secretary of state provide copies of law.

SEC. 286. The secretary of state shall provide copies of this law, in conjunction with the general election laws of the state and transmit the same to the county clerk of each county, at least twenty (20) days before any such direct primary election, and the same shall be in lieu of any such copies of said general election

laws required to be transmitted to county clerks by the secretary of state for use in such counties.

Legislation. Sec. 2401-U. § 16 of Act of 1910, cited under § 2401-E.

2401-V. When polls open and close.

SEC. 287. The polls of the several election precincts on direct primary election day shall be kept open from 7 o'clock in the morning until 7 o'clock in the evening of said day. If at the hour of closing there are electors at the polling place desiring to vote and who are qualified to participate therein, and who have not been able to do so since appearing at the polling place, said polls shall be kept open long enough after the hour of closing to allow those so present at that hour to vote. No one not present at the hour of closing shall be entitled to vote because the polls may not be actually closed when he arrives. No adjournment or intermission whatever shall take place until the polls shall be closed, and until all the votes cast at such poll have been counted and the result publicly announced.

Legislation. Sec. 2401-V. § 17 of Act of 1910, cited under § 2401-E.

2401-W. Duties of judges and clerks.

SEC. 288. As soon as the polls are finally closed, the judges of election shall open the ballot boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each party, at the same time bunching the tickets cast for each party together in separate piles, and shall then fasten each pile together. As soon as the clerks and judges shall have assorted and fastened together the ballots of each separate party, they shall take the tally sheets provided by the county, municipal or city clerk, and shall count all the ballots for each party separately until the count is completed, and shall certify to the number of votes cast for each candidate. The tally sheets shall be so kept that such sheets shall show the number of votes received. They shall then place the counted ballots in a box, but in no case shall they intermingle party votes. After all

have been counted and certified to by the clerks and judges, they shall seal the returns for all parties in one envelope, to be returned to the county, municipal or city clerk.

Legislation. Sec. 2401-W. § 18 of Act of 1910, cited under § 2401-E.

2401-X. Tally sheets—Form.

SEC. 289. Two sets of tally sheets for each political party having candidates to be voted for at said direct primary election shall be furnished for each election precinct by the county, municipal or city clerk, at the same time and in the same manner that the ballots are furnished, and shall be as follows:

Each tally sheet, or the first sheet of each tally book to be furnished, shall be headed, "Tally sheet for.....
(name of political party).....(name of city)
..... (county)..... (ward)
.....(election precinct), for a direct primary
election held.....(date)."

The names of candidates shall be placed on the tally sheets in the order in which they appear on the official ballots, and in each case shall have the proper party designation at the head thereof.

Legislation. Sec. 2401-X. § 19 of Act of 1910, cited under § 2401-E.

2401-Y. General election laws apply.

SEC. 290. In making out and certifying the returns of the direct primary election in the several election precincts, the same shall be done and all acts pertaining thereto conducted in accordance with the provisions of the general election laws for the returns of general elections, except as herein otherwise provided.

Legislation. Sec. 2401-Y. § 20 of Act of 1910, cited under § 2401-E.

**2401-Z. Election of precinct officers—Term—Vacancies—
Central committee.**

SEC. 291. There shall be elected by each political party, subject to this law, at said biennial direct primary election, a committeeman and committeewoman for each election precinct, who shall be a resident of such precinct. The candidate for committeeman or committeewoman in any precinct, who receives a plurality of votes on any party direct primary ballot, shall be declared the elected committeeman and committeewoman of such party for such precinct. The members of the committee thus elected shall be the representatives of their respective political parties in and for such precincts in all ward or subdivision committees that may be formed. The members of the committee elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. And the members of the committee elected in the several precincts in each city or municipality shall constitute the city or municipal central committee of each of said respective political parties, and shall have the same powers and jurisdiction as to the affairs of their several parties in such city or municipal matters that the county committee has in county matters. Each member of the committee shall hold such position for the term of two years from the date of the first meeting of said committee immediately following the election. In case of a vacancy the remaining members of said county, city or municipal committee may select a successor to fill the vacancy, who shall be a resident of the precinct in which the vacancy occurred.

Vacancies in nominations occurring after the holding of any direct primary election, prior to eight days before election, shall be filled by the respective party committees of the city, municipality, district, county or state, as the case may be, in which such vacancies occur. Certificates of nomination to fill such vacancies shall be forthwith prepared and filed by such respective party committees with the respective officers in whose offices original petitions of candidacy are by this act required to be filed.

All of said county, municipal and city committees, together

with the respective candidates nominated for office, shall meet to organize by electing a chairman, and a vice-chairman who shall be a woman, and a secretary, within five (5) days after the candidates for their respective political parties shall have been nominated. The chairman and vice-chairman of the several party county committees shall constitute the state central committee of each such party, and the chairman and vice-chairman of the several county committees shall also constitute the congressional, judicial, senatorial and representative committees for the counties composing each such congressional, judicial, senatorial or representative district, respectively. Said state, congressional, judicial, senatorial and representative central committees of the respective political parties together with the respective candidates nominated for office shall meet to organize by electing a chairman and a vice-chairman as above provided, and secretary of each of said committees, respectively, within ten days after the nomination of such candidates; *Provided*, That any political party that polled ten thousand (10,000) votes at the last preceding general election for its candidate for governor shall be entitled to two additional members of said state central committee from such county, one of whom shall be a woman and two such additional members thereof for each additional ten thousand (10,000) votes or major portion thereof so polled. Such additional members of said state central committee shall be elected by the respective county central committees of the several political parties. The state central committee shall have power to make all rules for party government. All vacancies in state, congressional, judicial, senatorial or representative committees shall be filled by the respective county central committees. All central committees may select managing or executive committees, and may authorize such sub-committees to exercise any and all powers conferred upon the county, city, municipal, state, congressional, judicial, senatorial or representative central committees respectively.

Regularly elected and constituted party central committees of the respective political parties, at the time this act shall take effect, shall be considered the legal committees of the respective political parties until direct primary elections shall be held under the provisions of this act, and said central committees and each

of them, and the officers and members thereof, shall be subject to all the conditions of this section.

Legislation. Sec. 2401-Z. § 21 of Act of 1910, cited under § 2401-E.

2401-AA. State platform, how formulated.

SEC. 292. The candidates for the various state offices, and for the state senate and house of representatives, nominated by each political party at such direct primary election, the state chairman and state senators of such political party whose term of office extends beyond the second Tuesday in January of the year next ensuing shall meet in the city of Denver at a place to be designated by the respective state chairmen, at twelve o'clock noon on the fourth Tuesday of September after the date on which any direct primary election is held preliminary to any general election. They shall forthwith formulate the state platform of their respective parties. The platform of each party shall be framed and made public not later than five days after the date of such meeting.

Legislation. Sec. 2401-AA. § 22 of Act of 1910, cited under § 2401-E.

2401-BB. Party nominees, how chosen.

SEC. 293. Candidates voted on for offices at direct primary elections who receive a plurality of the votes cast shall be the respective party nominees for such respective offices. In the event that there is more than one office of the same kind to be filled, then the number of candidates equal to the number of offices to be filled receiving the highest number of votes shall be the nominees of such political party for such office.

Legislation. Sec. 2401-BB. Sec. 23 of Act of 1910, cited under § 2401-E.

2401-CC. State board of canvassers—Meeting—Statement—Ties—Vacancies.

SEC. 294. The canvassing of the returns of the direct primary elections as to candidates for state offices, United States sen-

ators and representatives in congress, and any other candidate whose district extends beyond the limits of a single county, shall be done by a board of state canvassers, consisting of the governor, secretary of state, auditor of state, treasurer of state and attorney general, or any three of them. Said board of state canvassers shall meet at the office of the secretary of state on the third Tuesday of September, at ten o'clock a. m., next after the holding of such direct primary election. As soon as said board has canvassed said vote it shall file a certificate with the secretary of state, which certificate shall show the vote of each candidate of each political party for each office. The votes for all county, city and municipal officers cast at any direct primary election shall be canvassed and the returns made by the same officers and in the same manner as the returns of votes cast at the ensuing elections are by law now required to be made. Such canvassing board and other officers canvassing votes cast at such direct primary election shall file with the proper officer a statement and report of such canvass, which statement and report of said direct primary election shall contain:

First—A statement duly certified to containing the names of all candidates voted for at the direct primary election, with the number of votes received, and also the total number of votes received by each candidate and for what office, said statement to be made as to each political party separately.

Second—A statement of the names of the persons or candidates of each political party who are nominated, as hereinbefore provided. Where there is more than one person to be elected to a given office at the ensuing election there shall be included in said statement of nomination the names of so many candidates for said office, nominated under the provisions of this act, as there are persons to be elected to said office at the ensuing election. Said statement shall, in like manner, be made separately as to each political party.

Third—A statement of the whole number of electors registered, where such official has custody of the registry of electors, and the number of ballots cast at said primary election.

If two or more candidates of the same political party are "tied" for the same office, the "tie" shall be determined in such manner as shall be agreed upon by the candidates so "tying." In case such candidates shall fail to agree upon the method of determining such "tie" within five (5) days after the completion of the canvass of such vote, the same shall then be determined by lot, to be cast then and there by and as the final canvassing board may determine. It shall be the duty of the secretary of state or the county, city or municipal clerk, as the case may be, upon the completion of any canvass, to immediately mail or deliver in person to each candidate so nominated a notice of such fact, and that his name will be placed upon the official ballot at the ensuing election. The persons whose names are so placed in said statement of nomination shall be the nominees of said respective political parties of which they are candidates, and such names shall be printed upon the official ballot prepared for the ensuing election. No names of candidates of any political party which is required to make nominations under this act shall be placed upon the official election ballot unless such candidate shall have been chosen in accordance with this act, except in case of a vacancy or vacancies, which shall be filled as herein provided. The name of such new candidate shall be certified under oath to the secretary of state, county clerk or the city or municipal clerk, as the case may be, by the chairman and secretary of said respective party committees.

Legislation. Sec. 2401-CC. Sec. 24 of Act of 1910, cited under § 2401-E.

2401-DD. Petition to court to correct errors and omissions.

SEC. 295. Whenever it shall appear by verified petition to any judge of the district court that any error or omission has occurred, or is about to occur, in the printing of the name of any candidate on official direct primary election ballots, or that any error has been or is about to be committed in printing such ballots, or that the name of any person has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed or is about to be performed by any judge or clerk of the direct primary election, or by the

secretary of state, or by the county or city or municipal clerk, or by any canvassing board or any member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred, or is about to occur, such judge shall forthwith, by order, require the officer or person or persons charged with the error, wrongful act or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty, and to do as the court shall order, or to show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order not performed. *Provided*, That the person or persons, committee or committees complaining of any such act, shall have the burden of proof cast upon him or them in the premises, and shall be required to deposit in court the sum of two dollars (\$2.00) per day for each person so cited or summoned into court, as a party or as a witness, to be paid to the said party or witness in case the charge is not sustained, said money so deposited shall be returned to the party depositing the same in case the said charges or any of them are sustained. Failing to obey the order of such court shall be contempt of court. Every such order shall be subject to summary review by the supreme court upon writ of error.

Legislation. Sec. 2401-DD. Sec. 25 of Act of 1910, cited under § 2401-E.

2401-EE. Independent candidates—Nomination of.

Sec. 296. Candidates for public office who do not wish to affiliate with a political party as defined in this act may be nominated otherwise than by a direct primary election, in the manner following:

A certificate of nomination shall be prepared which shall contain the name or names of any candidate or candidates for the office or offices to be filled, their several postoffice addresses, if any, their several residences, and if in a city or town, the street, number of residence and place of business, if any, and shall designate in not more than five words, instead of the party, the political or other name which the signers shall select; *Provided*, That

no name of any political party as defined in this act shall be used, in whole or in part, for this purpose. Said certificate shall be signed by legal voters residing within the district or political division in and for which the officer or officers are to be elected, to the number of at least three hundred when the nomination is for an office to be filled by the voters of the entire state; of at least one hundred where the nomination is for an office to be filled by the voters of a district less than a state and greater than a county, or by the voters of a county or city or municipality; of at least fifty when the nomination is for an office to be filled by the voters of a precinct, ward, or other division less than a county, other than a city. The signatures to said certificate of nomination need not all be appended to one paper, but no certificate shall be legal that does not contain the requisite number of names of voters whose names do not appear on any certificate previously filed under the provisions of this section; *Provided*, That any such certificate of nomination may be amended in this last respect at any time prior to ten days before the day of election. The certificate may designate or appoint upon the face thereof one or more persons as a committee to fill vacancies, and in case of vacancy in any of such nominations, the same may be filled by such person or committee by a verified certificate to that effect, duly filed with the officer with whom the original certificate of nomination was filed, at least eight days before the day of election. Each voter signing a certificate shall add to his signature his place of residence, and shall, before an officer duly authorized to administer the same, make oath by affidavit thereto attached, that he is a voter within and for the political division for which such nomination is made, and has truly stated his residence, and has not voted at any primary election to nominate a candidate for such office. Said certificate, when executed and acknowledged as before prescribed, shall be filed with the secretary of state, when for an office or offices to be filled by the voters of the entire state or of any division or district greater than a county; with the county clerk when for an office or offices to be filled by the voters of an entire county or county precinct, and with the city, municipal or town clerk when for an office or offices to be filled by the voters of such city, municipality or town.

The certificates of nomination to be filed with the secretary of state shall be filed not more than sixty days nor less than thirty days before the day of election; and the certificates of nomination to be filed with the county clerk shall be filed not more than sixty nor less than fifteen days before the day of election, and the certificates of nomination to be filed with the city, municipal or town clerk shall be filed not more than thirty nor less than fifteen days before the day of election.

Within eight days after the filing of any such certificate of nomination with the proper official as aforesaid each and every candidate named in said certificate of nomination shall formally accept the nomination therein tendered in a written statement, duly acknowledged, which said statement shall contain the full name and place of residence of such candidate, and if in a city or town, the street number of the same (if any there be) and his place of business, if any, and postoffice address.

When the provisions of this section have been complied with, the candidate or candidates named in such certificates of nomination shall be entitled to all the rights and subject to all the penalties of candidates nominated at direct primary elections. This section shall be liberally construed, so as to give independent candidates for public office every reasonable opportunity to make their candidacy effective.

Legislation. Sec. 2401-EE. Sec. 26 of Act of 1910, cited under § 2401-E.

2401-FF. Secretary and attorney general prepare forms.

SEC. 297. It shall be the duty of the secretary of state and the attorney general, on or before July 1, 1912, to prepare all forms necessary to carry out the provisions of this act and in accordance therewith, which forms shall be substantially followed in all direct primary elections held in pursuance thereof. Such forms shall be printed, with copies of this act, for public use and distribution.

Legislation. Sec. 2401-FF. Sec. 27 of Act of 1910, cited under § 2401-E.

2401-GG. Campaign expenses—Limit of contributions.

SEC. 298. No person shall, in order to aid or promote or secure his own nomination to public office, or the nomination of any other person to public office, under the provisions of this act, or any amendment thereto, directly or indirectly himself, or directly or indirectly by or through any other person for him, or on behalf of such other person, give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing, except for personal expenses. Personal expenses within the meaning of this act shall not in any event exceed five thousand dollars (\$5,000), if such person is a candidate for United States senator, twenty-five hundred dollars (\$2,500) if such person is a candidate for a state office or representative in congress, and one thousand dollars (\$1,000) if such person is a candidate for any other office, and any expenditure in excess of such sums by any person or persons for any such purpose within one year prior to such direct primary shall be unlawful. No person, co-partnership, organization or corporation shall directly or indirectly contribute or expend, pay or become liable for any of the expenses of any candidate. Any candidate, or other person who, or co-partnership, organization or corporation which shall violate any of the provisions of this section shall be guilty of a felony, and on conviction shall be fined in a sum not less than five hundred dollars (\$500.00), or imprisonment in the penitentiary not less than one year, or both.

Legislation. Sec. 2401-GG. Sec. 28 of Act of 1910, cited under § 2401-E.

2401-HH. Candidates file statement.

SEC. 299. Every candidate for nomination under the terms of this act, or any amendment thereto, shall, not less than ten days after the day of holding the direct primary election or convention at which he is a candidate, or after the filing of any certificate of nomination wherein such candidate is nominated for public office, file an itemized statement in writing, duly sworn to as to its correctness, with the officer with whom his declaration of candidacy or other nomination paper is filed, setting forth each sum

of money and thing of value, or any consideration whatever, contributed, paid or promised by him, for the purpose of securing or influencing, or in any way affecting, his nomination to said office. Said statement shall set forth the sums paid as personal expenses, stating fully the nature, kind and character of the expense. Such statement, when so filed, shall immediately be subject to the inspection and examination of any elector, and shall be a part of the public records.

Legislation. Sec. 2401-HH. Sec. 29 of Act of 1910, cited under § 2401-E.

2401-JJ. Penalty for not filing statement.

SEC. 300. Any candidate for nomination for any office under the terms of this act who shall fail, neglect or refuse to file with the proper officer the statement provided for in the preceding section within the time provided therein, shall be guilty of a misdemeanor and on conviction shall be fined not less than one hundred dollars (\$100) and not more than five hundred (\$500) or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment.

Legislation. Sec. 2401-JJ. Sec. 30 of Act of 1910, cited under § 2401-E.

2401-KK. Provisions of statutes apply.

SEC. 301. The provisions of the statutes of Colorado in relation to the holding of general elections, the giving or solicitation of bribes, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making returns thereof, and all other kindred subjects shall apply to all direct primary elections insofar as they are consistent with this act, the intent of this act being to place direct primary elections under the regulation and protection of the laws now in force as to general elections, except as specifically provided otherwise in this act.

Legislation. Sec. 2401-KK. Sec. 31 of Act of 1910, cited under § 2401-E.

2401-LL. Forgery to nomination paper.

SEC. 302. Any person who shall forge any name of a person as a signer or witness to a nomination paper shall be deemed guilty of forgery, and, on conviction thereof, shall be punished accordingly.

Legislation. Sec. 2401-LL. Sec. 32 of Act of 1910, cited under § 2401-E.

2401-MM. Candidates for U. S. senator.

SEC. 303. At all direct primary elections next preceding the election of a United States Senator by the general assembly of Colorado there shall be placed upon the respective official direct primary election ballots, by the proper officer preparing such ballots, the names of the several candidates for the office of United States Senator for whose nomination certificates have been duly made, and filed under the provisions of this act; the votes for each of such candidates shall be counted and certified to by the election judges and clerks in the same manner as the votes for other candidates, and records of the votes for each of such candidates shall be made out and sworn to by the board of canvassers of each county of the state and returned to the secretary of state at the same time and in like manner as they shall transmit other returns of such primary elections required by this act.

It shall be the duty of the secretary of state to certify to both houses of the general assembly the names of the respective persons of each political party for whom votes were cast at any direct primary election under the provisions of this act at which such persons were candidates for the nomination for United States senator, which said certificates shall be made and filed upon the first day of the session of such general assembly convening next after said direct primary election.

The name of each candidate for the United States senate who shall have received a plurality of the votes for United States senator on his party ticket shall be placed on the regular election ballot with the proper party designated opposite each name and in all respects the same as a nominee for a state office is placed upon each ballot and the result of the vote at such general election shall be canvassed as are canvassed the votes for state officers,

and the secretary of state shall certify to both houses of the general assembly the names and number of votes cast for each such candidate for United States senator, which said certificate shall be made and filed upon the first day of the session of such general assembly convening next after said general election.

If any person whose vote is challenged under the provisions of this act shall knowingly, wilfully and corruptly swear or affirm falsely, he shall be deemed guilty of perjury and, on conviction thereof, shall be punished accordingly.

Legislation. Sec. 2401-MM. Sec. 33 of Act of 1910, cited under § 2401-E.

2401-NN. Legislative candidate—Statement—Pledge.

SEC. 304. Any candidate, under this act, for the office of state senator or member of the house of representatives of Colorado, if he desires to do so, may sign and file with his declaration of candidacy or nomination paper either of the following declarations:

STATEMENT.

I hereby declare to the people of the state of Colorado, as well as to the people of my legislative district, that during my term of office, I will always vote for the candidate for United States senator in congress who has received the highest number of the people's votes for that office at the general election next preceding the election of a senator in congress, without regard to my individual preference.

.....
Signature of Candidate for Nomination.

And in such case there shall be printed on the official direct primary election ballot, opposite or just below such candidate's name, the following: "Pledged to vote for people's choice for United States senator."

STATEMENT.

I hereby declare to the people of the state of Colorado, and particularly to the people of my legislative district, that, during my term of office, whenever called upon to vote for United States

senator, I will always vote for the candidate for United States senator who has received the highest number of votes upon my party ticket for that position at the direct primary election next preceding the election of United States senator.

.....
Signature of Candidate for Nomination.

And in such case there shall be printed on the official direct primary election ballot, opposite or just below such candidate's name, the following: "Pledged to vote for party's choice for United States senator."

Such declaration of candidacy or nomination paper shall be signed as above by the elector seeking such nomination.

Legislation. Sec. 2401-NN. Sec. 34 of Act of 1910, cited under § 2401-E.

2401-OO. Committee contests.

SEC. 305. All disputes or contests over the regularity or legality of the existence of any party committee in the state of Colorado or any subdivision thereof, shall be determined as provided by law.

Legislation. Sec. 2401-OO. Sec. 35 of Act of 1910, cited under § 2401-E.

2401-PP. Filings—Public records.

SEC. 306. All certificates of nomination, acceptances and withdrawals, as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any certificate of nomination, acceptance or withdrawal is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officer with whom such certificate of nomination was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it. All certificates of nomination, acceptances, withdrawals, poll books, tally sheets, ballots and ballot stubs shall be preserved as other records are for two years

after the election to which they pertain, unless otherwise ordered or restrained by some court. After which they shall be destroyed by the official custodian thereof by fire, without anyone inspecting the same.

Legislation. Sec. 2401-PP. Sec. 36 of Act of 1910, cited under § 2401-E.

2401-QQ. Withdrawal from nomination.

SEC. 307. Any person who has been nominated and who has accepted a nomination, as provided in this act, may cause his name to be withdrawn from nomination, at any time prior to ten days before election, by a written instrument declining such nomination, which written instrument shall be signed and acknowledged by such candidate before some officer authorized by the laws of this state to take acknowledgment of deeds, which instrument shall be filed with the secretary of state or county, city or municipal clerk with whom the original certificate nominating such candidate was filed.

Legislation. Sec. 2401-QQ. Sec. 37 of Act of 1910, cited under § 2401-E.

2401-RR. Death of candidate.

SEC. 308. If any person nominated as herein provided dies within eight days before the day fixed by law for the election, and the fact of such death becomes known to the secretary of state, or county, city or municipal clerk in whose office the certificate of nomination nominating such person was filed, the name of the deceased candidate shall not be printed upon the ballots for the election, and, if already printed, shall, if possible, be erased or cancelled before the ballots are delivered to the electors.

Legislation. Sec. 2401-RR. Sec. 38 of Act of 1910, cited under § 2401-E.

2401-SS. Certified lists of registration.

SEC. 309. The several county, city and municipal clerks shall furnish the election judges with certified lists of all registered voters, if such registration be required by law, along with the

poll books and other election material, as provided by law for the conduct of general elections.

Legislation. Sec. 2401-SS. Sec. 39 of Act of 1910, cited under § 2401-E.

2401-TT. Bribery of voter—Penalty.

SEC. 310. Any person who shall offer or, with knowledge of the same, permit any person to offer for his benefit any bribe or promise of gain to a voter to induce him to sign any election paper or any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after signing, shall be guilty of a felony, and, upon trial and conviction thereof, shall be punished by a fine of five hundred dollars (\$500.00), or by confinement in the penitentiary not less than one year, or both.

Legislation. Sec. 2401-TT. Sec. 40 of Act of 1910, cited under § 2401-E.

2401-UU. Election offenses—Punishment.

SEC. 311. Any act declared an offense by the general laws of this state concerning elections shall also, in like case, be an offense in all direct primary elections and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such elections, except as herein otherwise provided, shall apply in such case with equal force and to the same extent as though fully set forth in this act.

Legislation. Sec. 2401-UU. Sec. 41 of Act of 1910, cited under § 2401-E.

2401-VV. Misuse of nomination papers.

SEC. 312. Any person who, being in possession of nomination papers entitled to be filed under this act, or any act of the general assembly, shall wrongfully or wilfully either destroy, mutilate, suppress, neglect or fail to cause the same to be filed at the proper time in the proper office, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail not to exceed six (6) months, or by a fine not

to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment.

Legislation. Sec. 2401-VV. Sec. 42 of Act of 1910, cited under § 2401-E.

2401-WW. Neglect of duty by officers.

SEC. 313. If any judge or clerk of a direct primary election, or other officers or persons on whom any duty is enjoined by this law, shall be guilty of any wilful neglect of such duty or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine of five hundred dollars (\$500.00), or by confinement in the penitentiary not less than one year, or both.

Legislation. Sec. 2401-WW. Sec. 43 of Act of 1910, cited under § 2401-E.

2401-XX. Election contests.

SEC. 314. All election contests arising out of any direct primary election or the placing in nomination by petition of any such candidate or the failure to file any such petition or place any such candidate in nomination, by any person, official, board or convention in violation of any of the provisions of this act, shall be summarily adjudicated by the county or district court sitting within or for the political subdivision within or from which any such petition is to be filed or any such nomination is to be made or in which any such election controversy or contest may arise, and such of said respective courts first acquiring jurisdiction of any such controversy or contest, shall have original jurisdiction of any such controversy or contest as aforesaid, subject only to the summary appellate jurisdiction of the supreme court of the state by writ of error, and, in all cases involving petitions, nominations and elections concerning national or state offices, voted or to be voted on at any such primary election, the supreme court of the state shall take original jurisdiction for the purpose of summarily adjudicating any such controversy or contest. Every such procedure shall be by petition to the proper court, setting forth the grounds of complaint, and in case of any contest the contestee shall be made re-

spondent. Said petition shall be verified and a copy thereof shall within five days after the occurrence of the ground of complaint be served on the respondent or respondents therein named, requiring such respondent or respondents to answer thereto under oath within five days after such service. If personal service of such petition can not be procured in the state on such respondent, then service thereof may be made by leaving a copy of such petition within such time with the clerk of the court having original jurisdiction of any such controversy or contest and such clerk shall thereupon make diligent inquiry and endeavor to procure such respondent to make answer to said complaint as aforesaid, and upon the expiration of the time for such answer the court so having jurisdiction of any such controversy or contest shall forthwith set the same for trial on the merits thereof summarily adjudicating the same.

Legislation. Sec. 2401-XX. Sec. 44 of Act of 1910, cited under § 2401-E.

2401-YY. Election expenses.

SEC. 315. All ballots, blanks and other supplies to be used at any direct primary election held under the provisions of this act, and all expenses incurred in the preparation or the conduct of such primary election shall be paid out of the treasury of the city, municipality, county or state, as the case may be, in the same manner, with like effect, and by the same officers as in the case of general elections.

Legislation. Sec. 2401-YY. Sec. 45 of Act of 1910, cited under § 2401-E.

2401-ZZ. Laws applicable to this act.

SEC. 316. In construing the provisions of this act, and of all sections of the general statutes of the state of Colorado hereby made applicable to direct primary elections, the provisions of the general election laws applicable to the ensuing elections, shall apply and govern, except as in this act otherwise provided.

Legislation. Sec. 2401-ZZ. Sec. 46 of Act of 1910, cited under § 2401-E.

2401-AAA. Masculine pronoun includes feminine.

SEC 317. Wherever the masculine pronoun is used in this act it shall be construed to include feminine, and it shall only be necessary for a voter to state that he is twenty-one years of age in answer to any question in relation to his age.

Legislation. Sec. 2401-AAA. Sec. 47 of Act of 1910, cited under § 2401-E.

2401-BBB. County clerk defined.

SEC. 318. Whenever the words "county clerk" are used in this act, they shall be construed to mean the county clerk and recorder.

Legislation. Sec. 2401-BBB. Sec. 48 of Act of 1910, cited under § 2401-E.

2401-CCC. Duties of election commissioners.

SEC. 319. The election commission in cities having a special charter providing for such election commission, shall have all the powers and jurisdiction and perform all the duties provided by this act, in respect to county clerks, city or municipal clerks and boards of county commissioners or any other election officials or boards, subject to the general laws of this state, except as otherwise specifically provided by such charter, not inconsistent with the provisions of this act.

Legislation. Sec. 2401-CCC. Sec. 49 of Act of 1910, cited under § 2401-E.

CHAPTER XLIV.

EMBLEMS AND BADGES.

Section.

- 2402. Title of act amended.
- 2403. Unlawful wearing of badge—Penalty.
- 2404. Unauthorized use of letters G. A. R.—Penalty.
- 2405. Unlawful to counterfeit or sell badge of secret society.
- 2406. Penalty for counterfeiting or selling badge.
- 2407. Unlawful wearing of badge of secret society—Penalty.
- 2408. Fac-simile of badge filed—Certificate of record—Fees.
- 2409. Action for unlawful manufacture, sale or wearing of badge.
- 2410. Action by officer or member on behalf of society.
- 2411. Badge must be distinctive.
- 2412. Penalty for violation of act.
- 2413. Jurisdiction of justice of peace.
- 2414. Application of act.

2402. Title of act amended.

SECTION 1. That the title to said act be and the same is hereby amended so as to read as follows: An act to prevent persons from unlawfully using or wearing the badge or the insignia of the military order of the Loyal Legion of the United States, the Grand Army of the Republic, or any other secret society, or using the letters "G. A. R.," or the symbols of any other secret society, and prescribing a penalty for such unlawful use.

Legislation. Sec. 2402. Act 1889 p. 29 § 1, amending title to Act 1887 p. 55. The original title was:

AN ACT

To Prevent Persons from Unlawfully Using or Wearing the Badge of the Grand Army of the Republic or any Other Secret Society; or Using the Letters "G. A. R." or the Symbols of Any Other Secret Society, and Prescribing a Penalty for Such Unlawful Use.

2403. Unlawful wearing of badge—Penalty.

SEC. 2. Any person who shall wilfully wear the badge, rosette or insignia of the military order of the Loyal Legion of the United States, the Grand Army of the Republic, or any other secret society, or who shall use or wear the same to obtain aid or assistance thereby, within this state, unless he shall be entitled to use and wear the same under the rules and regulations of the military order of the Loyal Legion of the United States, the Grand Army of the Republic, or any other secret society, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a term not exceeding sixty (60) days, or by a fine not exceeding twenty (20) dollars, or by both such fine and imprisonment.

Legislation. Sec. 2403. Act 1889 p. 29 § 2, amending § 2 Act 1887, cited under § 2402.

The amendment introduced by name the Loyal Legion of the United States and cut down the extent of punishment.

2404. Unauthorized use of letters G. A. R.—Penalty.

SEC. 3. It shall be unlawful for any person, firm or corporation to make use of the consecutive letters "G. A. R." or such other secret society, the symbols of which are sought to be used for the purpose of advertising a business or place of business, unless such place of business shall be recognized by the rules and regulations of the Grand Army of the Republic, or such other secret society.

Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than one hundred dollars, or by confinement in the county jail for a period of not less than six months, or by both such fine and imprisonment.

Legislation. Sec. 2404. Act 1887 p. 55 § 2, cited under § 2402.

2405. Unlawful to counterfeit or sell badge of secret society.

SEC. 4. Whenever any association of persons organized into a beneficial or secret society or order, has heretofore adopted or used, or shall hereafter adopt or use, any badge, rosette, emblem

or insignia, for the purpose of being worn by its members or to indicate membership in such society or order, it shall be unlawful for any person or persons to counterfeit or imitate such badge, rosette, emblem or insignia, or to use, sell, offer for sale or in any way utter or circulate any counterfeit or imitation of any such badge, rosette, emblem or insignia.

Legislation. Sec. 2405. Act 1907 p. 331 § 1, entitled:

AN ACT

To Confer Exclusive Rights to the Use of Badges, Insignia, and Emblems for Benevolent and Secret Societies and Orders, and to Provide a Remedy for the Violation of Such Right, and a Penalty for the Unlawful Use of Such Badges, Emblems and Insignia.

2406. Penalty for counterfeiting or selling badge.

SEC. 5. Whoever counterfeits or imitates any such badge, rosette, emblem or insignia, or whoever uses, sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such badge, emblem, rosette or insignia, or keeps, or has in his possession with intent that the same shall be sold or disposed of, any such badge, rosette, emblem or insignia, or imitation of any such badge, rosette, emblem, or insignia, or uses or wears any counterfeit or imitation of any such badge, rosette, emblem or insignia, shall be guilty of a misdemeanor and be punished by fine of not more than three hundred (300) dollars or by imprisonment in the county jail for not more than three months, or by such fine and imprisonment.

Legislation. Sec. 2406. Act 1907 § 2, cited under § 2405.

2407. Unlawful wearing of badge of society—Penalty.

SEC. 6. Any person who shall wilfully wear the badge, rosette, emblem or insignia of any benevolent or secret society or order, or who shall use or wear the same to obtain aid or assistance thereby, within this state, unless he shall be entitled to use and wear the same under the rules and regulations of such benevolent or secret order or society while a member thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than three hundred (300) dollars.

or by imprisonment for not more than three months in the county jail, or by both such fine and imprisonment.

Legislation. Sec. 2407. Act 1907 § 3, cited under § 2405.

2408. Fac simile of badge filed—Certificate of record—Fees.

SEC. 7. Every benevolent or secret order or society which has heretofore adopted or used any badge, rosette, emblem or insignia, may file the same for record in the office of the secretary of state, by leaving two copies, counterparts or fac similes thereof, with the said secretary of state, and by filing therewith a sworn application specifying the name or names of the association, society or order on whose behalf such badge, rosette, emblem or insignia shall be filed. There shall be paid for such filing and record a fee of one dollar, and said secretary of state shall deliver to such association, order or society so filing or causing to be filed any such badge, rosette, emblem or insignia, so many duly attested certificates of record of the same as such association, order or society may apply for; for each of such certificates said secretary shall receive a fee of one dollar, and any such certificate of record shall in all places and prosecutions under this act be sufficient proof of the adoption of such badge, rosette, emblem or insignia. Said secretary of state shall not record for any association, society or order, any badge, rosette, emblem or insignia that would probably be mistaken for any badge, rosette, emblem or insignia theretofore filed by or on behalf of any other society, order or association.

[Penalty for unlawful use of Spanish war medals, sections 4451-4453.]

Legislation. Sec. 2408. Act 1907 § 4, cited under § 2405.

2409. Action for unlawful manufacture, sale or wearing of badge.

SEC. 8. Every such benevolent or secret order, society or association adopting or using as aforesaid, any badge, rosette, emblem or insignia, as aforesaid, may proceed by suit for damages and to enjoin the manufacture, use, display, sale or wearing of and counterfeit or imitation of any such badge, rosette, emblem or insignia, or the wearing or use of any genuine badge, rosette,

emblem or insignia by any person not entitled so to wear or use the same, and all courts of competent jurisdiction shall grant injunction to restrain such manufacture, use, display, sale or wearing, and award the complainant in any such suit, damages resulting therefrom, such as may be by said court deemed just and reasonable, and such court may also order any such counterfeits or imitations in possession or under the control of any defendant in such case, to be delivered to an officer of the court, to be destroyed.

Legislation. Sec. 2409. Act 1907 § 5, cited under § 2405.

2410. Action by officer or member on behalf of society.

SEC. 9. In all cases where such society or such benevolent or secret order, society or association is not incorporated, suits under this act may be commenced and prosecuted by any officer or member of such association, order, or society, on behalf of and for the use of such association, order or society.

Legislation. Sec. 2410. Act 1907 § 6, cited under § 2405.

2411. Badge must be distinctive.

SEC. 10. It shall be unlawful for any person or association to adopt as its badge, emblem, rosette or insignia, anything that is likely to be mistaken for the badge, rosette, emblem or insignia of any other benevolent or secret order, or society, or association, theretofore in common use, whether filed with the secretary of state or not.

Legislation. Sec. 2411. Act 1907 § 7, cited under § 2405.

2412. . Penalty for violation of act.

SEC. 11. Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished by fine of not more than three hundred (300) dollars or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

[This act is found between sections 2405 and 2414.]

Legislation. Sec. 2412. Act 1907 § 8, cited under § 2405.

2413. Jurisdiction of justice of peace.

SEC. 12. Justices of the peace shall have jurisdiction to punish any violation of the provisions of this act.

Legislation. Sec. 2413. Act 1907 § 9, cited under § 2405.

2414. Application of act.

SEC. 13. The provisions of this act shall not extend to, nor apply to, nor shall there be any protection to, nor shall the secretary of state accept for filing, any badge, rosette, emblem or insignia, of any society, order or association, the objects or purposes of which shall be unlawful, illegal, immoral, or in any way contrary to public policy; nor shall the provisions of this act in any way apply to any trades, labor union or association or organization of labor or capital or business interests.

Legislation. Sec. 2414. Act 1907 § 10, cited under § 2405.

CHAPTER XLV.

EMINENT DOMAIN.

Section.

- 2415. Compensation for lands—Commissioners—Jury.
- 2416. Petition to assess compensation—Contents—Parties.
- 2417. Presentation of petition in vacation—Summons issued.
- 2418. Summons—Return—Publication.
- 2419. Trial—Separate lands—Amendments—New parties—Rules—Process.
- 2420. Adjournment—Commissioners—Oath—Certificate—Rule—Entry—Compensation—Mines—Defective title.
- 2421. Jury.
- 2422. Hearing in vacation—Clerk issue venire.
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- 2424. Inspection of premises—Expenses—Trial—Verdict—Costs.
- 2425. Order of possession on payment.
- 2426. Intervention by third party—Cross-petition—Hearing.
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- 2429. Compensation paid to clerk or owner.
- 2430. Verdict recorded.
- 2431. Computing damages on property not taken—Property taken.
- 2432. Report of commissioners—Verdict of jury.
- 2433. Bills of exception.
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- 2445. Tunnel company file map of course.
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EMINENT DOMAIN.

Continued.

Section.

- 2448. Tramway company file map of course.
- 2449. Tunnel and tramway companies transport waste and ore on payment of toll.
- 2450. Pipe line and power companies furnish power on payment of fees.
- 2451. Use of public highways by companies.
- 2452. Rights of way across state lands.
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- 2455. Companies vested with right of eminent domain.
- 2456. Right of possession during pendency of action.
- 2457. Power companies carrying 5,000 voltage—Crossings—Arbitration—Award.
- 2458. Consent of municipal authorities necessary to use of streets and alleys.
- 2459. Electrical energy companies—Rights of way—Compensation—Fees.
- 2460. Contract for rights of way.
- 2461. Companies that may condemn rights of way.
- 2462. May enter on lands to survey—Liability.
- 2463. Proceedings to drain surplus water.
- 2464. Owner of mineral land may construct connecting railway spur.

2415. Compensation for lands—Commissioners—Jury.

SECTION 1. That private property shall not be taken or damaged for public or private use without just compensation; and in all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three freeholders, or by a jury when required by the owner of the property, as hereinafter prescribed.

[See bill of rights, Constitution, article 2, sections 14 and 15.]

[See Constitution, article 16, section 7.]

Legislation. Sec. 2415. G. L. § 1058. G. S. § 237. The eminent domain chapter was chapter 31 of the G. L. published in 1877 and was not contained in the code which was published in the same year but in 1883 when the G. S. were published the code was republished and bound with them and when so republished the eminent domain Act was interpolated as Chapter 21 of the Code. This republication of the Code as it existed in

1883 is cited in the official notes as G. S. C. In 1887, when the amended code was passed, these eminent domain sections were left out. The repealing section of Code 1887 repealed the Code proper and did not repeal this chapter. The same observations apply to the chapter on partition.

The eminent domain Act under the territory was part of the corporation chapter, R. S. p. 130 § 48, a single, long unbroken section, a substantial reprint of Act of 1864 p. 63 § 49, amended by Act of 1872 p. 67 and by Act of 1874 p. 101. The entire section was substituted by Act of 1876 p. 42 § 4.

The G. L. chapter above cited was an Act of 1877, entitled:

AN ACT

To Provide for the Exercise of the Right of Eminent Domain.

And repealed by implication or substitution all the territorial Acts above mentioned except possibly the Act of 1874 which refers specially to culverts and cattle guards in railroad condemnation cases. The 1872 Act was repealed in terms by G. L. p. 988.

CITATIONS.

The eminent domain act prescribes a complete system of procedure for the taking or damaging of private property and determining the compensation, and is a special proceeding.—*Tripp v. Overocker*, 7 C. 73, 75, 1 P. 696.

Proceedings under this act are special and the pleadings are not governed by the code.—*Knoth v. Barclay*, 8 C. 303, 6 P. 926.

Under this statute an abutting lot owner can not enjoin the construction of a railroad in the street.—*D. & S. F. R. Co. v. Domke*, 11 C. 256, 17 P. 777.

Proceedings under this act are purely statutory and the statute must be strictly pursued.—*Colo. Cent. R. Co. v. Allen*, 13 C. 233, 22 P. 606. *Colo. Cent. R. Co. v. Humphrey*, 16 C. 35, 26 P. 165.

The common law or rule for the recovery of costs by either party in actions at law does not control in condemnation proceedings.—*Dolores L. & C. Co. v. Hartman*, 17 C. 139, 29 P. 378.

The right of way for the conveyance of water through an irrigating ditch is a property right and has a money value.—*Sand Creek L. I. Co. v. Davis*, 17 C. 327, 29 P. 742.

The question whether the right of way in an irrigating ditch existed, could be determined in a civil action without condemnation proceedings.—*Saint v. Guerrero*, 17 C. 455, 53 P. 335.

A municipality is not liable for consequential damages to a lot owner on account of raising or lowering the grade of a street to the grade established in the first instance.—*Leiper v. Denver*, 36 C. 111, 85 P. 849.

CITATIONS CONTINUED.

The act of 1903 giving the public the right to fish in private streams was held to be in contravention of sec. 15, art. 2, of the constitution.—*Hartman v. Tresise*, 36 C. 152, 84 P. 685.

Rights to the use of water for a beneficial purpose, whatever the use may be, are property and protected by art. 2, sec. 15 of the constitution.—*Sterling v. Pawnee Ditch Co.*, 42 C, 426, 94 P. 339.

2416. Petition to assess compensation—Contents—Parties.

SEC. 2. That in all cases where the right to take private property for public or private use without the owner's consent, or the right to construct or maintain any railroad, spur or side track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other public or private work or improvement, or which may damage property not actually taken, has been heretofore or shall hereafter be conferred by general laws or special charter, upon any corporate or municipal authority, public body, officer or agent, person or persons, commissioner or corporation, and the compensation to be paid for in respect of the property sought to be appropriated or damaged for the purposes above mentioned, cannot be agreed upon by the parties interested; or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a non-resident of the state, it shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any railroad, spur or side track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other public or private work or improvement, to apply to the judge of the district or county court, either in term time or vacation, where the said property or any part thereof is situate, by filing with the clerk a petition, setting forth, by reference, his or their authority in the premises; the purpose for which said property is sought to be taken or damaged, a description of the property, the names of all persons interested as owners or otherwise, as appearing of record, if known or if not known, stating that fact, and praying such judge to cause the compensation to be paid to the owner to be assessed; if the proceedings seek to affect the property of persons under guardianship, the

guardians or conservators of persons having conservators, shall be made parties defendant, and if of married women their husbands shall also be made parties; persons interested whose names are unknown, may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown. In cases where the property is sought to be taken or damaged by the state for the purpose of establishing, operating or maintaining any state house, charitable or other state institution or improvement, the petition shall be signed by the governor, or such other person as he shall direct, or as shall be provided by law.

Under the provisions of this act, private property may be taken for private use, for private ways of necessity, for reservoirs, drains, flumes or ditches, on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes. The amendment of said act shall not be construed to affect any right, either as to remedy or otherwise, nor to abate any suit or action or proceeding existing, instituted or pending under the act so hereby amended.

[City or town may exercise right of eminent domain for public improvements, section 5309.]

[Towns and cities may condemn for water, light and gas works. Sections 6815 and 6825, sub. 67.]

[Right to condemn for ditches and reservoirs, etc., sections 990, 3167-3171 and 3202.]

[See also Constitution, article 16, section 7.]

[Eminent domain for drainage. Section 3200.]

[Irrigation districts may condemn for reservoirs, etc. Section 3451.]

[Condemnation by penitentiary commissioners for state canal or reservoir. Section 3501.]

Legislation. Sec. 2416. Act 1901 p. 173 § 1, amending Act 1885 p. 200 § 1, which amended G. S. § 238. G. L. § 1059.

The original Act did not contain last paragraph of text which was put there by Act of 1885 and the only amendment of the 1901 Act seems to be the insertion of the words "Spur or side-track."

CITATIONS.

The supreme court can not take original jurisdiction of condemnation proceedings.—*D. & N. O. R. Co. v. Lamborn*, 9 C. 121, 10 P. 797.

The title of one named in the petition as respondent, to the land sought to be taken, is admitted unless expressly denied.—*G. B. & L. R. Co. v. Haggart*, 9 C. 347, 12 P. 215.

CITATIONS CONTINUED.

A county court was without jurisdiction where the amount of the award was in excess of \$2,000.—*Denver City I. & W. Co. v. Middaugh*, 12 C. 434, 21 P. 565.

When the substantial requisites of the statute are not complied with (making husband a party) proceedings based upon service by publication are inefficient.—*Colo. Cent. R. Co. v. Allen*, 13 C. 234, 22 P. 606.

A petition in the county court must state value of the property sought to be taken and the amount involved.—*Id.*

Discretion of the court as to continuing proceedings pending the suspension of a pre-emption claim.—*Colo. M. Ry. Co. v. Bowles*, 14 C. 85, 23 P. 467. *Colo. M. Ry. Co. v. Ruedi*, 2 A. 206, 29 P. 1035, 30 P. 1102.

Petitioner may not at the same time set up title in itself to a mining claim and ask an adjudication upon it.—*Colo. M. Ry. Co. v. Croman*, 16 C. 381, 27 P. 256.

Statement of what pleadings are provided for in condemnation cases.—*D. & R. G. R. Co. v. Griffith*, 17 C. 600, 31 P. 171.

Right of way for a ditch for an electric light plant may be condemned, that being a manufacturing purpose.—*Lamborn v. Bell*, 18 C. 352, 32 P. 990.

Value at time of appraisalment and not at the time of filing petition should be ascertained.—*Id.* 353.

Sufficiency of certain allegations that compensation could not be agreed upon and of description of right of way.—*Colo. F. & I. Co. v. Four Mile Co.*, 29 C. 96, 66 P. 904.

Property held by a railroad company which is not devoted to or needed for public use may be condemned for a reservoir site.—*Denver P. & I. Co. v. D. & R. G. R. Co.*, 30 C. 219, 69 P. 573.

A private person may condemn land for a reservoir site.—*Kaschke v. Camfield*, 46 C. 63, 102 P. 1062.

Whether towns or cities must make application for the right of way and be refused, considered.—*Warner v. Gunnison*, 2 A. 435, 31 P. 238.

The statute contemplates proceedings by one corporation against another.—*San Luis Land etc. Co. v. Kenilworth Canal Co.*, 3 A. 245, 32 P. 861.

2417. Presentation of petition in vacation—Summons issued.

SEC. 3. If such petition be presented to a judge in vacation, the judge shall note thereon the day of presentation, and shall also note thereon the day when he will hear the same, and shall

order the issuance of summons to each resident defendant, and the publication of notice to each non-resident defendant, and the clerk of the court shall at once issue the summons and give notice accordingly.

Legislation. Sec. 2417. G. L. § 1060. G. S. § 239.

CITATIONS.

The right to exercise the power of eminent domain or to take a particular tract should be determined in limine.—*Lavelle v. Julesburg* (Jan. 1911), 112 P. 775.

Facts under which a proceeding was dismissed where the issuance of summons had been postponed.—*Colo. M. Ry. Co. v. Ruedi*, 2 A. 206, 29 P. 1035, 30 P. 1102.

2418. Summons—Return—Publication.

SEC. 4. Such summons shall be made returnable on such day and hour as the court or judge may fix and determine, not less than thirty days after the issuance of such summons, and the same shall be served in the same manner as in other cases, at least ten days before the return day thereof. When it appears that the owners, or any of them, of the property sought to be condemned, are non-residents, * or have been returned by the sheriff of the county as not found, and in case said summons is so returned "Not found," an affidavit shall likewise be filed in said cause by the plaintiff or his attorney, setting forth that the person making such affidavit had made diligent inquiry and had been unable to learn of the whereabouts of such person, * the court or judge shall order a notice to be published in some newspaper published in said county, addressed to such owner or owners, in which notice shall be stated the name of the petitioners, a full and accurate description of the property sought to be taken or condemned, the purpose for which such condemnation is asked, and the time and place when such owner or owners are required to appear, and the title of the court, or name of the judge, before whom said application is to be heard. The court or judge shall also fix and determine when said notice shall be made returnable, but in no case shall it be made returnable in less than thirty days, and the same shall be published at least four (4) times in some weekly newspaper before the return day thereof. If there shall

be no weekly newspaper published in the county in which such proceedings are had, the court or judge shall direct that said notice be published in some newspaper named by him, published in the nearest convenient place to such county.

Legislation. Sec. 2418. G. L. § 1061, amended by Act 1879 p. 57 § 1. G. S. C. § 240. The amendment consisted in making the return of summons not less than 30 instead of not less than 10 days and the insertion of the clause between the stars.

CITATIONS.

All material issues raised by the answer should be determined in limine. One who failed to answer until after the time fixed by the summons and until after order appointing commissioners waived the right to a trial of issues raised by the answer.—*Williams v. Routt County* (Oct. 1910), 111 P. 74.

Facts under which a proceeding was dismissed where the issuance of summons had been postponed.—*Colo. M. Ry. Co. v. Ruedi*. 2 A. 206, 29 P. 1035, 30 P. 1102.

2419. Trial—Separate lands—Amendments—New parties—Rules—Process.

SEC. 5. Causes may be heard by such judges in vacation as well as in term time, but no cause shall be heard earlier than ten (10) days after service upon defendant, or upon due publication against non-residents. Any number of separate parcels of property situate in the same county may be included in one petition, and the compensation for each shall be assessed separately, by the same or different commissions or juries, as the court or judge may direct. Amendment to the petition, or to any paper or record in the cause, may be permitted whenever necessary to a fair trial and final determination of the questions involved. Should it become necessary at any stage of the proceeding to bring a new party before the court or judge, the court or judge shall have the power to make such rule or order in relation thereto as may be deemed reasonable and proper; and shall also have power to make all necessary rules and orders for notice to parties of the pendency of the proceeding, and to issue all process necessary to the execution of orders and judgments as they may be entered.

Legislation. Sec. 2419. G. L. § 1062. G. S. C. § 241.

CITATIONS.

The pleadings are not governed by the code and amendments are discretionary with the court.—*Knoth v. Barclay*, 8 C. 301, 6 P. 926.

Defective proceedings may be renewed and the petition and other papers amended.—*Colo. Cent. R. Co. v. Allen*, 13 C. 236, 22 P. 607.

**2420. Adjournment—Commissioners—Oath—Certificate—
Rule—Entry—Compensation—Mines—Defective
title.**

SEC. 6. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall hear proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint a board of commissioners of not less than three freeholders, to ascertain and determine the necessity for taking such lands, franchises or other property, and to appraise and determine damages, and compensation to be allowed to the owner and person interested in the real estate or property proposed to be taken or damaged in such county, for the purposes alleged in the petition, and said court or judge shall fix the time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said commissioners, and any one of them may administer oaths to witnesses produced before them: they may issue subpoenas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose. They shall hear the proofs and allegations of the parties, and after viewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owner or parties interested, for the lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested in consequence of the condemnation of the same, taken or injuriously affected, as aforesaid. They shall make, subscribe, and file with the clerk of the court in which such proceedings are had, a certificate of their said ascertainment

and assessment, in which such lands, real estate or claims shall be described, with convenient certainty and accuracy." The court or judge, upon such certificate or verdict of a jury as hereinafter provided, and due proof that such compensation and separate sums, if any be certified or found to have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in court, or with the clerk of the court, for that purpose, shall make and cause to be entered in its minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested, to the proper parties. Upon the entry of such rule the said petitioner shall become seized in fee except as hereinafter provided, of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, and may take possession of, and hold and use the same for the purposes specified in said petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate or rule of said court or judge; *Provided*, Any such right of way shall never give the petitioner any right, title or interest to any vein, ledge or deposit found or existing in the premises condemned. And if at any time after an attempted or actual ascertainment of compensation under this act, or any purchase or by donation to said petitioner, of any lands, real estate or claims, for purposes specified in the petition, it shall appear that the title acquired thereby, to all or any part of such lands for the use of such petitioner, or if said assessment shall fail or be deemed defective, the said petitioner may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, real estate or claims, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the court or judge may by rule in that behalf made, authorize the said petitioner, if already in posses-

sion, and if not in possession to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such petitioner on account thereof. *Provided*, Such petitioner shall pay a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained; *Provided, further*, That the judge or the court before or wherein any such proceedings are had shall determine the amount such petitioner shall be required to pay or deposit pending any such ascertainment; and in every case where possession shall be authorized, it shall be lawful for the owner to conduct the proceedings to a conclusion, if the same shall be delayed by the petitioner. The said commissioners shall each receive four (4) dollars per day as compensation for each day actually employed, such compensation to be taxed by the court or judge. If any commissioner so appointed shall die, be unable or fail to serve, the court or judge may appoint another in his place, on reasonable notice of the application.

Legislation. Sec. 2420. G. L. § 1063. G. S. C. § 242.

CITATIONS.

The denial of a motion to set aside the assessment of the commissioners is such a final determination as will authorize an appeal.—*D. & N. O. R. Co. v. Jackson*, 6 C. 341. *Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

Abutting lot owners entitled to compensation for railroad in streets.—*Denver v. Bayer*, 7 C. 121, 2 P. 10. *D. & S. F. Ry. Co. v. Hannegan*, 43 C. 126, 95 P. 343.

When the privilege of abandoning the proceedings is lost and when the land owner acquires a vested right to the compensation awarded.—*D. & N. O. R. Co. v. Lamborn*, 8 C. 381, 388, 8 P. 582.

The sum deposited for possession is security for all damages in case of abandonment as well as for compensation awarded. Instituting new proceedings and holding possession already taken.—*Id.* 382, 385.

The deposit made for possession can not be used in a subsequent proceeding by the same petitioner for a portion of the same premises.—*Id.* 9 C. 121, 10 P. 797.

The provision allowing preliminary possession is not open to objection under Sec. 15 Art. II of the constitution.—*McClellan v. Peo.*, 9 C. 192, 11 P. 86. *San Luis L. etc. Co. v. Kenilworth Canal Co.*, 3 A. 247, 250, 32 P. 860.

CITATIONS CONTINUED.

A private tramway may not condemn right of way. Discretion of court in vacating order granting preliminary possession.—*Peo. v. Dist. Court*, 11 C. 148, 17 P. 298.

This section seems to contemplate that the commissioners or jury shall determine the necessity for taking private property, though they are not required to return a specific finding upon this question.—*D. & S. F. R. Co. v. Domke*, 11 C. 257, 17 P. 782.

All damages present and prospective should be assessed; seepage and leakage from a canal and reservoir should be anticipated.—*Denver C. I. & W. Co. v. Middaugh*, 12 C. 434, 21 P. 565.

This section expressly authorizes proceedings to perfect the title in case the assessment shall fail or be deemed defective.—*Colo. Cent. R. Co. v. Allen*, 13 C. 236, 22 P. 607.

Instances of several actions against a railroad company, being enjoined upon commencement of condemnation proceedings by the company.—*Brahoney v. D. U. & P. R. Co.*, 14 C. 28, 23 P. 172.

Where a county judge failed to turn over a deposit to his successor, petitioner was required to replace the same or lose possession.—*Clelland v. McCumber*, 15 C. 358, 25 P. 700.

Final judgment awarding the fund to the defendant should not be entered while a plea of intervention was undisposed of.—*Hutchinson v. McLaughlin*, 15 C. 495, 25 P. 318.

This section cited in considering what is a legal jury of freeholders.—*Colo. Cent. R. Co. v. Humphrey*, 16 C. 36, 26 P. 165.

The judgment in condemnation proceedings is always conditional—the statutory deposit for possession covers costs and no execution is necessary.—*Dolores L. & C. Co. v. Hartman*, 17 C. 141, 29 P. 378.

The question of necessity or feasibility for the taking must be tried, if at all, by commissioners appointed by the court.—*Sand Creek L. I. Co. v. Davis*, 17 C. 332, 29 P. 744.

When the question of necessity is and is not waived by respondent.—*Id. Thompson v. DeWeese-Dye Co.*, 25 C. 243, 53 P. 507. *U. P. R. R. Co. v. Colo. Postal T-C. Co.*, 30 C. 138, 69 P. 565. *Kaschke v. Camfield*, 46 C. 65, 102 P. 1062.

The question of whether or not the enterprise of an irrigating ditch and reservoir is practicable or can be made a financial success can not be inquired into.—*Gibson v. Cann*, 28 C. 501, 66 P. 879.

The question whether a petitioner may construct a tunnel through a coal vein must be determined in limine, and can not be raised by instructions.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 102, 66 P. 905.

CITATIONS CONTINUED.

In the case of a telegraph line the authority of the commissioners in determining the question of necessity, limited to determining the width of the right of way.—*U. P. R. R. Co. v. Colo. Postal T. C. Co.*, 30 C. 138, 69 P. 565.

Where the question of damages is submitted to a jury that is the only matter proper for its consideration—all other questions must be settled in limine.—*Id. Kaschke v. Campfield*, 46 C. 66, 102 P. 1062.

Where a ditch right of way was acquired under R. 'S. 1868, it was merely an easement across which defendant had a right to conduct water.—*Smith canal or D. Co. v. Colo. I. & S. Co.*, 34 C. 493, 82 P. 943.

The mere fact that plaintiff is inconvenienced by a railroad viaduct does not entitle him to damages but the damages must apply specifically to plaintiffs property.—*Fort Collins D. R. Co. v. France*, 41 C. 512, 92 P. 953.

The provision of this section as to possession is inapplicable to proceedings to establish a road under sections 5834-5843.—*Boothroyd v. Larimer County*, 43 C. 432, 97 P. 257.

The constitution and statute contemplate compensation in money; bridges, siphons, farm crossings etc. to be constructed by petitioner are not to be considered in assessing damages.—*Great Western Ry. Co. v. Ackroyd*, 44 C. 458, 98 P. 726.

Where demand is seasonably made for a commission to determine the question of necessity it is error to refuse the same.—*Kern v. Minekime*, 45 C. 379, 101 P. 341.

After overruling a motion to vacate the award of commissioners the court has no authority to enter a conditional judgment as to payment.—*Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

The question of necessity for taking the property for municipal purposes is not for the jury to determine—that being wholly within the province of the municipal authorities.—*Warren v. Gunnison*, 2 A. 433, 31 P. 238.

This section cited in holding that the court has no authority to require the petitioner to deposit money to cover costs nor to dismiss the pleadings without notice.—*Teller v. Stevers*, 20 A. 111, 77 P. 262.

2421. Jury.

SEC. 7. Any party to any proceeding brought under the provisions of this act, before the appointment of commissioners, as in section six aforesaid provided, and before the expiration of the

time for the defendant to appear and answer, may demand a jury of freeholders residing in the county in which the petition is filed, to ascertain, determine and appraise the damages or compensation to be allowed: such demand may be made in the pleadings, or by a separate writing filed with the clerk. Such jury shall consist of six persons, unless a larger number shall be demanded by any party to the proceedings; but in no case shall the number of jurors exceed twelve, and any party so demanding a larger number than six jurors shall advance the fees for such additional jurors for one day's service according to the rate allowed jurors in the district court.

[Section 6 referred to is section 2420.]

[For fees of jurors see sections 2541 and 2543.]

Legislation. Sec. 2421. Act 1889. p. 156 § 1, amending. G. S. C. § 242. G. L. § 1064. The section before amendment read:

Sec. 7. Any person, persons or company whose estate or interest is to be affected by the proceeding, may demand at the time of any hearing of such petition, and before the appointment of the commissioners herein provided, a jury of six freeholders residing in the county where such petition is filed, to ascertain, determine and appraise the damages or compensation to be allowed therefor, and thereupon said court or judge shall make an order for the drawing of such jury as herein provided.

CITATIONS.

Prior to the amendment of 1889 a jury called from the general panel in attendance in term time is not a legal jury.—*Colo. Cent. R. Co. v. Humphrey*, 16 C. 36, 26 P. 165.

This section cited in holding that going to trial before the jury on the question of damages waives the right to have the question of necessity determined by commissioners.—*Sand Creek L. I. Co. v. Davis*, 17 C. 332, 29 P. 744.

The Eminent Domain Act in so far as it provides for a jury upon request of any party other than the respondent is in contravention of the express terms of Sec. 15, Art. II.—*S. W. Land Co. v. Hickory Jackson Ditch Co.*, 18 C. 492, 33 P. 275.

Since the amendment of 1889 a jury must be selected from a regular panel. Section 2422 provides for juries in vacation.—*Colo. F. & I. Co. v. Four Mile R. Y. Co.*, 29 C. 98, 100, 66 P. 904. *Warner v. Gunnison*, 2 A. 434, 31 P. 238.

The sole function of the jury as indicated by this section is merely to ascertain and report the compensation due the owner.—*Kaschke v. Camfield*, 46 C. 64, 102 P. 1062.

The amendment of 1889 permits but does not require an

CITATIONS CONTINUED.

answer to be filed; the petitioner is not entitled to judgment as of default; nor is defendant precluded from introducing proof for want of an answer.—*Whitehead v. Denver*, 13 A. 136, 56 P. 913.

2422. Hearing in vacation—Clerk issue venire.

SEC. 8. In cases fixed for hearing of petition in vacation, it shall be the duty of the clerk of the court in whose office the petition is filed, at the time of issuing summons or making publication, to write the names of twenty-four disinterested freeholders of the county on twenty-four separate slips of paper, each slip to contain but one name, and shall cause to be selected from said twenty-four names twelve of said persons, such selection to be made by lot and without choice or discrimination; and the said clerk shall thereupon issue a venire directed to the sheriff of his county, commanding him to summon the twelve persons so selected as jurors to appear at the court house in said county at a time named in the venire.

Legislation. Sec. 2422. Act 1889 p. 157 § 2, amending G. S. C. § 244. G. L. § 1065. The amendment consists in changing the number of jurors from "six" to "twelve." The constitution Art. II § 15 calls for "a jury" in condemnation cases and a jury at common law means twelve men.

CITATIONS.

Prior to amendment of 1889 a jury could not be called from the general panel in term time.—*Colo. Cent. R. Co. v. Humphrey*, 16 C. 36, 26 P. 165.

This section cited in holding that a jury may be demanded only by the respondent.—*S. W. Land Co. v. Hickory Jackson Ditch Co.*, 18 C. 490, 33 P. 276.

In cases tried in term time the jury must be called from the regular panel. This section applies to juries in vacations.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 97-100, 66 P. 904. *Warner v. Gunnison*, 2 A. 434, 31 P. 238.

2423. Challenge of jurors—Talesmen.

SEC. 9. The petitioner and every party interested in the ascertaining of compensation, shall have the same right of challenge of jurors as in other civil cases in the district and county court. If the panel be not full by reason of non-attendance, or

be exhasuted by challenges, the judge hearing such petition shall designate by name the necessary number of persons of proper qualification, and the clerk or judge shall issue another venire returnable instanter, and until the jury be full.

[For causes of challenge to jurors see Code, section 199, also Statutes, sections 3670, 3689-3694.]

Legislation. Sec. 2423. G. L. § 1066. G. S. C. § 245.

CITATIONS.

If in fact this section is applicable in all cases it is but a special provision which must be followed in securing talesmen for a jury in a condemnation case.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 100, 66 P. 905.

This section cited in holding that the interest of a juror, as a member of a municipality does not disqualify him.—*Warner v. Gunnison*, 2 A. 435, 31 P. 238.

2424. Inspection of premises by jury—Expenses—Trial—Verdict—Costs.

Sec. 10. When the jury has been selected, and have taken an oath faithfully and impartially to discharge their duties, the court or judge may, at the request of any party to the proceeding, and in the discretion of the court or judge, order that the jury go upon the premises sought to be taken or damaged, in charge of a sworn bailiff, and examine the premises in person; *Provided*, That such order shall require the party making such request to advance a sum, to be fixed by the court or judge in such order, sufficient in the opinion of the court to defray the necessary expenses of such examination, and in default of such party forthwith advancing such sum so fixed as aforesaid, such order shall be held for naught upon such trial before a jury; the court or judge shall preside in the same manner and with like power as in other cases; evidence shall be admitted or rejected by the court or judge according to the rules of law, and at the conclusion of the evidence the matters in controversy may be argued by counsel to the jury, and at the conclusion of the arguments, the court or judge shall instruct the jury in writing. The jury shall retire for deliberation, in charge of a sworn officer, and when they have agreed upon a verdict the same shall be returned into court. If the jury shall fail to agree, it may be discharged by the court or

judge, and thereupon another jury shall be summoned as soon as practicable, in the same manner as before, and like proceedings be had with such jury or successive juries, until a verdict is had. Any party feeling aggrieved by such verdict may move before such court or judge for a new trial, in the same manner and for the same causes as in actions at law, and the refusal of such court or judge to grant a new trial may be excepted to and assigned for error. If the amount of compensation ascertained by any such jury, or by a board of commissioners as provided in this act, shall not be in excess of any lawful tender of compensation found by the court or judge to have been made by the petitioner to the party to whom such compensation shall be awarded, no costs provided to be taxed under the provisions of this act shall be allowed to such party.

Legislation. Sec. 2424. Act 1889 p. 157 § 3, amending G. L. § 1067. G. S. C. § 246. The amendment is different in order and arrangement as by collation will appear.

CITATIONS.

Unexpected admission of evidence upon an issue which by reason of an order of court previously made the party was not prepared to meet, presents a case of surprise which may be made the ground of a motion for a new trial.—*Colo. M. Ry. Co. v. Bowles*, 14 C. 86, 23 P. 467.

It is evident from an examination of this section that the jury shall be the same in number and selected in the same way whether the trial occurs in term or vacation.—*Colo. Cent. R. Co. v. Humphrey*, 16 C. 36, 26 P. 165.

The respondent is entitled to recover his court costs reasonably incurred. The court possesses discretionary power as to costs unreasonably incurred.—*Dolores L. & C. Co. v. Hartman*, 17 C. 139, 29 P. 378.

The mere fact that the amount of damages awarded may not correspond exactly with the testimony of any particular witness is no ground for setting aside the verdict.—*Thompson v. DeWeese-Dye D. Co.*, 25 C. 248, 53 P. 507.

The verdict of the jury in the county court placing the value of the property at more than \$2,000 will not oust the jurisdiction of the court; the verdict might be set aside and is not a judicial determination until judgment has been rendered.—*Peo. v. County Court*, 26 C. 480, 58 P. 591. *Sievers v. County Court*, 11 A. 147, 52 P. 634.

CITATIONS CONTINUED.

No other person than the bailiff in charge of the jury is allowed to accompany the jury on their view of the premises.—*Colo. F. & I. Co. v. Four Mile Co.*, 29 C. 101, 66 P. 905.

A respondent should be given a new trial on the ground of misconduct of jurors, where part of the jurors went with petitioner to a saloon and drank with him.—*Scott v. Tubbs*, 43 C. 221, 95 P. 540.

This section cited in holding that the court may not require petitioner to deposit money to cover costs.—*Teller v. Sievers*, 20 A. 111, 77 P. 262.

2425. Order of possession on payment.

SEC. 11. The judge or court shall, upon such verdict, proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same, upon payment of full compensation as ascertained as aforesaid; and such order with evidence of such payment, shall constitute complete justification of the taking of such property.

Legislation. Sec. 2425. G. L. § 1068. G. S. C. § 247.

CITATIONS.

Under this and secs. 2426-2428 where petitioner desires to occupy the premises pending appeal it is proper to order an additional deposit.—*Otero Canal Co. v. Fosdick*, 20 C. 527, 39 P. 334.

Where petitioner obtained an order of possession and paid all damages awarded to the respondent who refused possession the district court was mandamusd to award petitioner a writ of possession.—*Peo. v. Dist. Court*, 46 C. 386, 104 P. 484 (Dissenting opinion 392.)

This section provides for a conditional judgment upon the verdict of a jury but not upon a certificate of commissioners.—*Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

2426. Intervention by third party—Cross-petition—Hearing.

SEC. 12. Any person not made a party to such proceeding may become such by filing a cross-petition at any time before the hearing, setting forth that he is an owner or has an interest in the property sought to be taken or damaged by the petitioner, and

stating the character and extent of such interest, and the rights of such person shall thereupon be fully considered and determined. Except such cross-petition there shall be no written pleadings on the part of any party to the proceeding, but at the hearing, provided for in section six of this act, the court shall hear and dispose of all objections that may be raised touching the legal sufficiency of the petition or cross-petition, or the regularity of the proceedings in any other respect; and in case any person or corporation shall, at any time or in any manner succeed to the right of any party in the subject matter of the proceeding, such proceeding shall not abate thereby, but such person or corporation, upon motion and upon proof of the fact of such succession, shall be substituted for such party as a party to the proceedings.

[Section 6 referred to is section 2420.]

Legislation. Sec. 2426. Act 1889 p. 158 § 4, amending G. L. § 1069. G. S. C. § 248. The section before amendment read:

Sec. 12. Any person not made a party may become such by filing his cross petition, setting forth that he is the owner or has an interest in the property sought to be taken or damaged by the proposed work; and the rights of such last named petitioner shall thereupon be fully considered and determined.

CITATIONS.

Intervention by minor who had previously conveyed to defendant's grantor and had elected to disaffirm the conveyance.—*Hutchinson v. McLaughlin*, 15 C. 492, 25 P. 317.

It was error to enter final judgment awarding the fund to the defendant while the plea of intervention was undisposed of.—*Id.*

This section cited in considering the necessary pleadings in a condemnation suit.—*D. & R. G. R. Co. v. Griffith*, 17 C. 600, 31 P. 172.

This section referred to in a contempt proceeding for violating an injunction granted without jurisdiction because contained in the final judgment.—*Tegeler v. Schneider* (March 1911, 114 P. 289).

2427. Appeal to supreme court—Writ of error.

SEC. 13. In all cases, upon final determination thereof in either the district or county court, or before a district or county judge in vacation, an appeal may be taken to the supreme court

in the same manner as provided by law for taking of appeals from the district court to the supreme court; and a writ of error from the supreme court shall lie in every case to bring in review the proceedings therein; after such final determination.

[For appeals and writs of error see Code, section 419-441.]

Legislation. Sec. 2427. G. L. § 1070. G. S. C. § 249.

CITATIONS.

Where commissioners have filed their ascertainment of assessment and the court has denied a motion to vacate the same, there is such a final determination as will authorize a writ of error or an appeal.—*D. & N. O. R. Co. v. Jackson*, 6 C. 340, 341. *Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

By procuring a review the petitioner does not waive his right to abandon. Until the supreme court has acted the amount of damage is not finally determined.—*D. & N. O. R. Co. v. Lam-born*, 8 C. 386, 8 P. 582. 9 C. 119, 10 P. 797.

Where the petitioner desires to occupy the premises pending appeal it is proper to order an additional deposit sufficient to cover the amount of the compensation ascertained and awarded.—*Otero Canal Co. v. Fosdick*, 20 C. 527, 39 P. 334.

Where a jury in the county court awarded damages in excess of \$2000 and the judge set aside the verdict as excessive it was such a final disposition of the matter as would authorize certiorari to remove the cause to the supreme court.—*Peo. v. County Court*, 26 C. 478, 58 P. 591.

The code provisions relating to appeals govern appeals to the supreme court in proceedings under the eminent domain act; errors assigned need not be incorporated in a motion for a new trial.—*Loloff v. Sterling*, 31 C. 103, 71 P. 1114.

Where judgment was entered upon the verdict from which an appeal was taken and the judgment was subsequently vacated there was no final judgment from which an appeal would lie.—*Fort Collins D. R. Co. v. Hoyt*, 35 C. 480, 84 P. 69.

An order that petitioner is endowed with the powers of eminent domain is interlocutory; appeal lies only where the damages have been ascertained and approved by the court.—*Burlington & C. R. Co. v. Colo. E. R. Co.*, 45 C. 224, 226, 100 P. 608.

Where defendants appealed from an order overruling their motion to vacate the award of commissioners and not from the decree, certain error in the decree was regarded as harmless.—*Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

**2428. Possession of Property during pendency of appeal—
Bond of owner.**

SEC. 14. In cases in which compensation shall be ascertained as aforesaid, if the owner or owners of the property taken or affected shall appeal or prosecute a writ of error, the petitioner may pay into court or to the clerk thereof the amount of compensation so ascertained and awarded for the use of the owner or owners, and shall thereupon be entitled to take possession and use the property taken or affected, the same as if no such appeal or writ of error had been taken. The said money so deposited as aforesaid shall remain on deposit until such appeal or writ of error shall have been heard and determined; *Provided, however.* That if the owner or owners shall elect to receive such money before the determination of said appeal or writ of error, said appeal or writ of error shall thereupon be dismissed, so far as such owner or owners are concerned. If the appeal or writ of error shall be taken by the petitioner, the amount of compensation shall nevertheless be paid into court or to the clerk thereof, for the use of the owner or owners of the property condemned or affected before such petitioner shall have the right to take possession of and use said property so condemned or affected; and such compensation may be paid to such owner or owners, at any time before the determination of such appeal or writ of error, upon the execution and delivery of a good and sufficient bond by such owner or owners with good and sufficient surety or sureties, to be approved by said court or judge, in a sum double the amount of such compensation, conditioned that such owner or owners will pay and refund to such petitioner all or such part of said sum as said owner or owners may be required or adjudged to pay said petitioner, together with the cost of said appeal or writ of error.

[See section 2456.]

Legislation. Sec. 2428. G. L. § 1071. G. S. C. § 250.

CITATIONS.

Before petitioner can obtain possession pending appeal he is required to deposit the amount of the compensation, to be held or disposed of as in this section provided.—*D. & N. O. R. Co. v. Jackson*, 6 C. 342.

CITATIONS CONTINUED.

If the petitioner has obtained possession he must in order to retain the same make an additional deposit equal in amount to the compensation.—*D. & N. O. R. Co. v. Lamborn*, 8 C. 387, 8 P. 582. *Otero Canal Co. v. Fosdick*, 20 C. 527, 39 P. 334.

Upon payment of the award the rule required by sec. 2420 must be entered unless the payment is made to enable petitioner to obtain possession pending review.—*Hoover-Benninghoff v. Palisade*, 48 C. 64, 108 P. 984.

Where defendants appealed from the award of the commissioners and not from the decree, an error in the decree concerning the taking of possession was disregarded.—*Id.*

This section cited in holding that the court has no authority to require a petitioner to deposit a sum of money to cover costs.—*Teller v. Sievers*, 20 A. 111, 77 P. 262.

2429. Compensation paid to clerk or owner.

SEC. 15. Payment of compensation adjudged may in all cases be made to the court or the clerk thereof, who shall on demand pay the same to the party entitled thereto, taking receipt therefor; or payment may be made to the party entitled thereto, his, her or their conservator or guardian.

Legislation. Sec. 2429. G. L. § 1072. G. S. C. § 251.

2430. Verdict recorded.

SEC. 16. The court or judge shall cause the verdict of the jury and the judgment of said court to be entered upon the records of said court.

Legislation. Sec. 2430. G. L. § 1073. G. S. C. § 252.

2431. Computing damages on property not taken—Property taken.

SEC. 17. In estimating the value of all property actually taken, the true and actual value thereof at the time of the appraisalment shall be allowed and awarded, and no deduction therefrom shall be allowed for any benefit to the residue of said property; but in estimating damages occasioned to other portions of claimant's property, or any part thereof other than that actually

taken, the value of the benefits, if any, may be deducted therefrom; *Provided, however*, That in all cases the owner or owners shall receive the full and actual value of all property actually taken, and in case the benefit to the property not actually taken exceed the damage sustained by the owner to the property not actually taken, the owner or owners shall not be required to pay, or allow credit for such excess.

Legislation. Sec. 2431. G. L. § 1074. G. S. C. § 253.

CITATIONS.

The constitution and eminent domain act contemplate a compensation in money and the commissioners had no power to consider an agreement for a right of way over other premises.—*Burlington & C. R. Co. v. Schweikart*, 10 C. 184, 14 P. 329.

The true and actual value of the property or interest therein at the time of the appraisement is to be awarded to the owner.—*Colo. Cent. R. Co. v. Allen*, 13 C. 238, 22 P. 607.

The proper measure of the owner's recovery stated.—*Colo. M. Ry. Co. v. Brown*, 15 C. 195, 25 P. 88.

An instruction that the value of the land and the damage to the residue should be assessed in accordance with the situation of the property and conditions existing at the date of filing the petition was reversible error.—*Twin Lakes etc. Synd. v. Colo. M. Ry. Co.*, 16 C. 6, 27 P. 260.

It is error to withdraw from the jury evidence as to the benefits to the property from a proposed railroad.—*Colo. Cent. R. Co. v. Humphrey*, 16 C. 37, 26 P. 166.

Property should be valued at time of appraisement and not of taking possession. Damage to contiguous lots constituting one parcel. No damage to residue for annoyance suffered by the public.—*Lavelle v. Julesburg* (Jan. 1911), 112 P. 775.

Adaptability for a building site, of ground taken, an element of damages. Instructions as to "market value."—*Denver etc. Ry. Co. v. Howe* (Jan. 1911), 112 P. 779.

A defendant is bound by his answer asking that a certain amount be allowed in damages and he cannot claim a larger amount.—*Denver etc. Ry. Co. v. Howe* (Jan. 1911), 112 P. 782.

2432. Report of commissioners—Verdict of jury.

SEC. 18. The report of the commissioners or the verdict of the jury in every case shall state:

First—An accurate description of the land taken.

Second—The value of the land or property actually taken.

Third—The damages, if any, to the residue of such land or property; and

Fourth—The amount and value of the benefit.

Legislation. Sec. 2432. G. L. § 1075. G. S. C. § 254.

CITATIONS.

Where a report failed to show that the question of benefits was considered by the commission the report should have been set aside or resubmitted; the statute must be strictly construed.—*Pueblo etc. R. Co. v. Kudd*, 5 C. 271.

It is error for the court to refuse to instruct the jury that their verdict should be in language and form as provided by the act, and where the verdict fails to state the value of benefit the judgment will be reversed.—*D. & R. G. R. Co. v. Stark*, 16 C. 292, 26 P. 779.

This section cited in a ditch condemnation case.—*Sand Creek L. I. Co. v. Davis*, 17 C. 330, 29 P. 743.

In all proceedings under this act the jury is required to make return upon the subject of benefits.—*D. & R. G. R. Co. v. Griffith*, 17 C. 602, 31 P. 172. *Otero Canal Co. v. Fosdick*, 20 C. 526, 39 P. 334.

This section specifies what particular items shall be reported upon by the jury and all other questions must be determined in limine.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 100, 66 P. 905.

This section is mandatory and unless the verdict shows each of the elements mentioned it is insufficient and will be set aside. The failure of a verdict to designate the benefits may be waived. Jurors may not impeach their verdict.—*rt. Lyons Canal Co. v. Farnan*, 48 C. 414, 109 P. 861.

The damages to the residue, and the benefits must be separately stated in the verdict.—*Denver etc. Ry. Co. v. Hoice* (Jan. 1911), 112 P. 779.

An instruction that there is no evidence of benefits is erroneous.—*R. G. S. Ry. Co. v. Knight*, 1 A. 219, 28 P. 19.

There is nothing in this specification nor elsewhere in the act which requires the jury to pass on the question of necessity.—*Warner v. Gunnison*, 2 A. 433, 31 P. 238.

The verdict of the jury may not describe the land by reference to the petition.—*Norris v. Pueblo*, 12 A. 296, 55 P. 747.

2433. Bills of exception.

SEC. 19. Bills of exception shall be allowed, signed and sealed by the court or judge, as in cases in law, within such reasonable time as shall be fixed by such court or judge.

[For bill of exceptions see Code, sections 419-421.]

Legislation. Sec. 2433. G. L. § 1076. G. S. C. § 255.

2434. Repeal—Effect—Proviso.

SEC. 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed; but such appeal shall not impair or affect any act done or any right accrued or acquired under the law so repealed, and all proceedings commenced or pending by virtue of the law so repealed may be prosecuted and defended to final determination in the same manner and with the same effect as they might under such laws, notwithstanding such appeal; *Provided*, That this act shall not be construed to repeal any law or part of law upon the same subject passed by this general assembly, but in all such cases this act shall be construed as providing a cumulative remedy.

Legislation. Sec. 2434. G. L. § 1077. G. S. C. § 256.

2435. Tunnel companies—Rights of way.

SEC. 21. Any foreign or domestic corporation, organized or chartered for the purposes, among other things, of carrying, transmitting, or delivering ore, mineral, or other property for hire by means of a tunnel or tunnels, shall have the right of way for the construction, operation and maintenance of any such tunnel or tunnels of sufficient size and dimensions for such purposes, through or over any patented or unpatented mines, mining claims, or other lands, without the consent of the owner thereof, if such right of way is necessary to reach the place to or from which it is proposed to carry such ore, mineral, or other property.

Legislation. Sec. 2435. Act 1907 p. 282 § 1, entitled:

AN ACT

Granting the Exercise of the Right of Eminent Domain to Tunnel Transportation Companies, Pipe Line Transmission Companies, Electric Power Transmission Companies and Aerial Tramway Companies.

2436. Pipe line companies—Rights of way.

SEC. 22. Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting or maintaining a pipe line for the transmission of power, water, air, or gas for hire to any mine or mining claim, or manufacturing, milling, mining, or public purpose, shall have the right of way for the construction, operation and maintenance of such pipe line or pipe lines for such purposes, through any lands, without the consent of the owner thereof, where such right of way is necessary for the purpose for which said pipe line shall be used.

Legislation. Sec. 2436. Act 1907 § 2, cited under § 2435.

2437. Electric power companies—Rights of way.

SEC. 23. Any foreign or domestic corporation, organized or chartered for the purpose, among other things, of conducting and maintaining electric power transmission lines for the purpose of providing power or light by means of electricity for hire, shall have a right of way for the construction, operation and maintenance of such electric power transmission line through any patented or unpatented mine or mining claim, or other land without the consent of the owner thereof, where such right of way is necessary for the purposes proposed.

Legislation. Sec. 2437. Act 1907 § 3, cited under § 2435.

2438. Tramway companies—Rights of way.

SEC. 24. Any foreign or domestic corporation organized or chartered for the purposes, among other things, of conducting and maintaining for hire an aerial tramway for transporting ores, minerals, waste material or other property from any mine or mining claim by means of an aerial tramway, shall have the right of way for the construction, operation and maintenance for such tramway, and for all necessary towers and supports thereof over and across any intervening mining claim, lands, or premises, without the consent of the owner thereof, where such right of way is necessary for the purposes proposed.

Legislation. Sec. 2438. Act 1907 § 4, cited under § 2435.

2439. Common carriers—Fees.

SEC. 25. Any such corporation or corporations, organized or chartered for any or all of the purposes hereinbefore mentioned shall be deemed a common carrier or common carriers and shall fix and charge only a reasonable and uniform rate to all persons who desire the use of any such tunnel, pipe line, electric power transmission line or aerial tramway.

Legislation. Sec. 2439. Act 1907 § 5, cited under § 2435.

2440. Distance governs rate.

SEC. 26. In fixing the rate to be charged its patrons, as provided in section 5, hereof, any such transportation tunnel company or aerial tramway company shall take into consideration the distance over which the material to be transported shall be carried.

[Section 5 above referred to is section 2439.]

Legislation. Sec. 2440. Act 1907 § 6, cited under § 2435.

2441. Compensation for rights of way.

SEC. 27. Any such corporation shall make due and just compensation for such right of way to the owners of the property through which it is proposed to construct, operate and maintain such tunnel, pipe line, electric transmission line, or aerial tramway, and when the parties cannot agree upon such right of way and the amount of compensation to be paid the owner of such property, the same shall be determined in manner as now provided by law for the exercise of the right of eminent domain.

Legislation. Sec. 2441. Act 1907 § 7, cited under § 2435.

2442. Lode owner entitled to mineral matter.

SEC. 28. The owner of any vein, lode, mining claim or other property over which it is proposed to construct a tunnel as herein provided, shall have the right to all ore and mineral taken from such vein or lode at the intersection thereof with such tunnel.

Legislation. Sec. 2442. Act 1907 § 8, cited under § 2435.

2443. Lode owner have access to tunnel.

SEC. 29. The owner or owners of such vein or lode so intersected shall have the right, at any reasonable time and from time to time, upon application to the superintendent or other managing officer of such tunnel corporation, to enter such tunnel with their surveyors and inspectors for the purpose of inspecting and making a survey of any such vein or lode, and the owners of such veins and lodes, and their employees shall have the right of ingress and egress through said tunnel at all reasonable times.

Legislation. Sec. 2443. Act 1907 § 9, cited under § 2435.

2444. Tunnel company acquires no right to vein matter.

SEC. 30. Nothing in this act shall be so construed as to give such tunnel corporation the right to follow any vein or lode without the consent of the owner or owners, and when any vein or lode is encountered in driving any such tunnel, such tunnel corporation shall only have the right of way to cross such vein or lode at such angle as may be suitable for the convenient operation of the tunnel.

Legislation. Sec. 2444. Act 1907 § 10, cited under § 2435.

2445. Tunnel company file map of course.

SEC. 31. Any such tunnel corporation desiring to avail itself of the benefit of this act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed tunnel, for which it desires a right of way, together with a statement showing the route of the proposed tunnel, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line of tunnel.

Legislation. Sec. 2445. Act 1907 § 11, cited under § 2435.

2446. Pipe line company file map of course.

SEC. 32. Any such pipe line corporation, desiring to avail itself of the benefit of this act, shall file with the county clerk

and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed line, for which it desires a right of way, together with a statement showing the route of the proposed pipe line, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.

Legislation. Sec. 2446. Act 1907 § 12, cited under § 2435.

2447. Electric power company file map of course.

SEC. 33. Any such electric power transmission corporation, desiring to avail itself of the benefit of this act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed line, for which it desires a right of way, together with a statement showing the route of the proposed line, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.

Legislation. Sec. 2447. Act 1907 § 13, cited under § 2435.

2448. Tramway company file map of course.

SEC. 34. Any such aerial tramway corporation, desiring to avail itself of the benefit of this act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed route, for which it desires a right of way, together with a statement showing the route of the proposed tramway, and the patented or unpatented mining claims or other property, over or across which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.

Legislation. Sec. 2448. Act 1907 § 14, cited under § 2435.

2449. Tunnel and tramway companies transport waste and ore on payment of toll.

SEC. 35. Any such tunnel or aerial tramway corporation or

corporations shall, subject to its or their reasonable regulations, accept from the owners of mining properties, all ore and waste, and other materials loaded in cars and delivered to it or them along its or their line of tunnel or aerial tramways for transportation, and afford facilities for the handling of the same at such place, upon payment to it or them, at the rates established and fixed by such tunnel or aerial tramway corporation, or corporations.

Legislation. Sec. 2449. Act 1907 § 15, cited under § 2435.

2450. Pipe line and power companies furnish power on payment of fees.

SEC. 36. Any such pipe line corporation, or electric power transmission corporation or corporations shall, subject to its or their reasonable regulations, furnish to the owners of mining properties power from said pipe lines or electric power transmission lines upon payment to it or them at the rates established and fixed by such corporation or corporations.

Legislation. Sec. 2450. Act 1907 § 16, cited under § 2435.

2451. Use of public highways by companies.

SEC. 37. Any telegraph, telephone, electric light or power or pipe line company chartered or incorporated under the laws of this state, shall have the right to construct, maintain and operate lines of telegraph, telephone, electric light, wire or power or pipe line along, across, upon and under any public highway in this state subject however to the provisions of this act, but such lines of telegraph, telephone, electric light, wire, power or pipe line shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway.

Legislation. Sec. 2451. Act 1907 p. 385 § 1, entitled:

AN ACT

To Facilitate the Construction of Telegraph, Telephone, Electric Light Power and Pipe Lines, Providing the Right of Eminent Domain Therefor, and Defining the Relation of Persons or Corporations Seeking Such Rights of Way to Persons or Corporations Already Owning Such Rights of Way, Including Those Owning or Using and Those Seeking to Own and Use Rights of Way for the Transmission of Electric or Other Power.

CITATIONS.

The act of 1885 p. 358 cited in holding that proceedings might be maintained by a telegraph company against a railroad corporation.—*U. P. R. Co. v. Colo. Postal T-C. Co.*, 30 C. 144-146, 69 P. 567.

2452. Rights of way across state lands.

SEC. 38. Any telegraph, telephone, electric light power or pipe line company chartered or incorporated under the laws of this state shall have the right to construct, maintain and operate lines of telegraph, telephone, electric light wire power or pipe line and obtain permanent right of way therefor, over, upon, under and across all public lands owned by or under the control of the state of Colorado, upon the payment of such compensation and upon compliance with such reasonable conditions as may be required by the state board of land commissioners of the state of Colorado.

Legislation. Sec. 2452. Act 1907 § 2, cited under § 2451.

2453. Power of companies to contract.

SEC. 39. That such telegraph, telephone, electric light power or pipe line company shall have power to contract with any person or corporation, the owner of any lands or any franchise, easement or interest therein, over or under which the line of telegraph, telephone, electric light wire power or pipe line is proposed to be laid or created, for the right of way for the construction, maintenance and operation of its telegraph, telephone, electric light wires, pipes, poles or other property, and for the erection, maintenance, occupation and operation of offices at suitable distances for the public accommodation.

Legislation. Sec. 2453. Act 1907 § 3, cited under § 2451.

2454. Rights of way across private lands.

SEC. 40. That such telegraph, telephone, electric light power or pipe line company shall be entitled to the right of way over or under the lands, property, privileges, rights of way and easements of other persons and corporations, and to the right to erect its

poles, wires, pipes, system and offices, upon making just compensation therefor, in the manner now provided by law; *Provided, however,* That the right hereby granted, and the rights granted by section 5 hereof shall not extend to the taking of any portion of the right of way of a railroad company, except to the extent of acquiring any necessary easement or easements to cross the same, or to serve such railroad company with telegraph, telephone or electric light service.

[Section 5 referred to is section 2455.]

Legislation. Sec. 2454. Act 1907 § 4, cited under § 2451.

2455. Companies vested with right of eminent domain.

SEC. 41. That such telegraph, telephone, electric light power or pipe line company is hereby vested with the power of eminent domain, and authorized to proceed to obtain rights of way for poles, wires, pipes and systems for the purposes aforesaid by means thereof, and whenever such company shall be unable to secure by deed, contract or agreement such rights of way for the purposes aforesaid, over, under, across and upon the lands, property, privileges, rights of way or easements of persons or corporations, it shall be lawful for such telegraph, telephone, electric light power or pipe line company to acquire such title in the manner now provided by law for the exercise of the right of eminent domain and in the manner as set forth in this act.

Legislation. Sec. 2455. Act 1907 § 5, cited under § 2451.

2456. Right of possession during pendency of action.

SEC. 42. Immediately upon the filing of the verified petition provided for by section 1716 of Mills' Annotated Statutes accompanied by the deposit with the clerk of the court for the use of the respondent of that amount of money which the court or judge thereof, from the affidavits of two disinterested persons selected by the petitioner and from such other evidence as the court or judge thereof may require, shall determine to be compensation proper to be made to any person or corporation holding or owning any right, title, interest, claim, lien or estate in, to or upon any lands, real estate, mining claim or any interest therein,

the court or judge thereof shall, by rule in that behalf made, authorize the petitioner if not in possession to take possession of such right of way, and if already in possession to maintain and keep such possession and in all cases to use and enjoy such right of way during the pendency and until the final conclusion of such proceedings, and shall, by rule in that behalf made, stay all actions and proceedings against such petitioner on account thereof.

[Section 1716 M. A. S. referred to is section 2416.]

[For right of possession during pendency of appeal see section 2423.]

Legislation. Sec. 2456. Act 1907 § 6, cited under § 2451.

2457. Power companies carrying 5,000 voltage—Crossings—Arbitration—Award.

SEC. 43. Any person or corporation seeking to secure a right of way for lines of telegraph, telephone, electric light, or for the transmission of electric power for any purpose, over, under or across any right of way of any other person or corporation for such purposes, or any of them, or seeking to erect or construct his or its lines of wire or wires under or over the lines of wire or wires already constructed by such other person or corporation for any such purposes upon, under, along or across any public highway, or upon, under, along or across any public lands owned or controlled by the state of Colorado, shall, before constructing such lines or wires over, under or across such rights of way or wires of other persons or corporations, where either of said line or lines, wire or wires, shall carry a current at an electrical pressure of five thousand (5,000) volts or more, agree with such other persons or corporations as to the conditions under or upon which such overhead or underneath construction, crossing or crossings, shall be made, looking to the due protection and safeguard of the wires of the person or corporation already having right of way for such wires, and looking to the safety of life, health and property, and in case of inability to agree upon the conditions under or upon which such overhead or underneath crossing or crossings shall be made, then the person or persons, corporation or corporations owning and operating or controlling the lines of wires already built or constructed, and the person or persons, corporation or corporations seeking to construct new lines or wires, or to make said

crossing or crossings, shall each select a person as an arbitrator, which two persons shall determine said conditions under or upon which such overhead or underneath construction, crossing or crossings, shall be made, and in case of a disagreement in regard thereto, by the said arbitrators, they shall select a third person to act with them, and the decision made by any two of said arbitrators shall be final and binding upon the person or persons, corporation or corporations so seeking to make or construct crossing or crossings as aforesaid, shall construct the crossing or crossings in a manner determined by such arbitrators. The parties interested shall before they make their submission to the arbitrators, make and subscribe a written article of agreement in and by which they shall agree to submit the said matter as to how said crossing or crossings shall be made, to the arbitrators named, and will abide by their award. Said award shall be in writing, and a copy thereof delivered to each of the parties interested. Such conditions for protection at said crossing or crossings shall be established at the sole expense of the person or corporation seeking the right of way for such overhead or underneath construction, crossing or crossings: *Provided, however,* That nothing in this act shall affect the right of any person or persons, corporation or corporations to make such crossing or crossings where the lines or wires of neither of the parties concerned carry a current at an electrical pressure of five thousand (5,000) volts or more.

Legislation. Sec. 2457. Act 1907 § 7, cited under § 2451.

2458. Consent of municipal authorities necessary to use of streets and alleys.

SEC. 44. Nothing in this act contained shall be construed to authorize any person, partnership, association or corporation to erect any poles, construct any telegraph, telephone, electric light power or pipe line or extend any wires or lines along, through, in, upon, under or over any streets or alleys of any city or incorporated town without having first obtained the consent of the municipal authorities having power to give such consent of such city or incorporated town.

Legislation. Sec. 2458. Act 1907 § 8, cited under § 2451.

Sec. 9 of the Act of 1907 p. 385 repealed the Act of 1885 p. 358 on the same subject. The five sections of the repealed Act corresponded substantially to §§ 2451, 2453-2455 and 2458; the new Act adding power and pipe lines to the companies to be benefitted.

CITATIONS.

In a proceeding to condemn a right of way for a telegraph line over a railroad right of way held that the question whether petitioner had leave from municipal authorities along its proposed right of way did not concern respondent.—*U. P. R. Co. v. Colo. Postal T-C. Co.*, 30 C. 143, 69 P. 567.

2459. Electrical energy companies—Rights of way—Compensation—Fees.

SEC. 45. Any company incorporated under the laws of this state for the purpose of generating, transmitting and selling electrical energy for telegraphing, telephoning, heat, light, power or other purposes shall have the right to construct, maintain and operate the necessary transmission lines; and where such energy is generated by water or other power, to construct, maintain and operate the necessary reservoirs, ditches, flumes, pipe lines and power stations, and shall be entitled to the right of way for such ditches, flumes, pipe and transmission lines across and along any railroad or other public highway in this state, and over the lands, privileges and easements of another person or corporation, upon such conditions and at such annual charges as may be required by the board of county commissioners of the county through which such highways may pass, not less than one-half of one per cent. of the gross earnings of any such corporations, which said part of said gross earnings shall be divided between the county and municipalities through which any such line, ditch or flume shall run, in proportion to the mileage in each such county or municipality; and to do all things necessary in relation thereto, upon making just compensation therefor in the manner provided by law; *Provided*, That such ditches, flumes, pipes and transmission lines shall be so constructed along or across any railroad or other public highway as not to obstruct or hinder the travel thereon; *And provided, further*, That nothing in this act shall be construed to authorize any person or company to construct any such ditches, flumes, pipe or transmission lines within the limits

of any city or incorporated town without first having obtained the consent of the proper municipal authorities.

Legislation. Sec. 2459. Act 1901 p. 131 § 1, entitled:

AN ACT

Granting to Companies Generating, Transmitting and Selling Electrical Energy the Right of Eminent Domain.

2460. Contract for rights of way.

SEC. 46. Such companies shall have power to contract with any person or corporation, the owner of any lands or of any franchise or easements therein for such rights of way and for repairing and preserving the same, as well as for the erection and occupation of stations and offices at suitable distances for the public occupation: and whenever such company shall fail on application therefore to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privileges or easement of another person or corporation, it shall be lawful for such company to acquire such title in the manner provided by law for the exercise of the right of eminent domain.

Legislation. Sec. 2460. Act 1901 § 2, cited under § 2459.

2461. Companies that may condemn rights of way.

SEC. 47. If any corporation formed for the purpose of constructing a road, ditch, reservoir, pipe line, bridge, ferry, tunnel, telegraph line or railroad line, shall be unable to agree with the owner, for the purchase of any real estate or right of way or easement or other right necessary or required for the purpose of any such corporation, for transacting its business, or for the right of way or any lawful purpose connected with the operations of the company, such corporation may acquire title to such real estate or right of way, or easement or other right, in the manner provided by law for the condemnation of real estate, or right of way, and any ditch, reservoir, or pipe line company may in the same manner condemn and acquire the right to take and use any water not previously appropriated.

Legislation. Sec. 2461. Act 1891 p. 98 § 3, amending G. S. § 338. G. L. § 304.

It is questioned whether companies which by this section were given rights to condemn must comply with the requirements of later acts, now §§ 2445-2448.

CITATIONS.

Under this section a right of way for a mining tunnel to be used for draining mines and transporting ores for such proprietors as desire to avail themselves thereof may be condemned.—*Tanner v. Treasury T. M. & R. Co.*, 35 C. 595, 83 P. 465.

2462. May enter on lands to survey—Liability.

SEC. 48. Any corporation formed under the provisions of this act, for the purpose of constructing a road, ditch, tunnel or railroad, may cause such examination and survey as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, may enter upon the lands of any person or corporation, but subject to liability for all actual damages which shall be occasioned thereby.

[The act above referred to is the general act on incorporation.]

Legislation. Sec. 2462. G. L. § 305. G. S. § 339.

2463. Proceedings to drain surplus water.

SEC. 49. That whenever the owner or owners of any parcel or parcels of land desire to construct a drain for the purpose of carrying off surplus water, and they cannot agree among themselves or with the parties who own land below through which it is expedient to carry the drain, in order to reach a natural waterway, then proceedings may be had in the same manner as in cases of eminent domain affecting irrigation works of diversion, and the right of way for such drains shall be regarded as equal to that of irrigation canals.

Legislation. Sec. 2463. Act 1893 p. 258 § 1, entitled:

AN ACT

To Provide for the Drainage of Wet Land.

2464. Owner of mineral land may construct connecting railway spur.

SEC. 50. It shall be lawful for the owner of any coal or

other mineral lands not contiguous to any railroad or railway track in this state, desiring to connect such lands with any railroad or railway track by means of a connecting railway spur, not to exceed fifteen miles in length, to construct and operate such connecting railway spur across any other lands lying intermediate between such coal or other mineral lands and any railroad or railway track with which such connection may be desired; and in case the owner of such coal or other mineral lands is unable to agree with the owner or owners of such intermediate lands for the purchase of any necessary rights of way across such intermediate lands for the purpose of constructing and operating such connecting railway spur as to the purchase price of such rights of way, then the owner of such coal or other mineral lands may exercise the right of eminent domain, and condemn any rights of way across such intermediate lands necessary to make such connection and to construct and operate such connecting railway spur, and may acquire title to such rights of way in the manner provided by law for the condemnation of lands for rights of way by railroad companies; and all the laws of this state relating to the manner of exercising the right of eminent domain by railroad companies are hereby made applicable to such proceedings.

Legislation. Sec. 2464. Act 1901 p. 237 § 1, entitled: '

AN ACT

Concerning the Exercise of the Right of Eminent Domain.

CHAPTER XLVI.

EMPLOYMENT AGENCIES.

I. COLORADO FREE EMPLOYMENT AGENCIES.—2465-2475.

II. PRIVATE EMPLOYMENT AGENCIES.—2576-2488-E.

I. COLORADO FREE EMPLOYMENT AGENCIES.

Section.

- 2465. Colorado free employment agencies created.
 - 2466. Superintendent and assistant superintendent of Agencies—Term—Salary.
 - 2467. Office—Applicants—Records.
 - 2468. Weekly report of superintendent.
 - 2469. Duty of superintendent.
 - 2470. Annual report of superintendent.
 - 2471. No fees charged—Penalty for receiving fee.
 - 2472. Definitions of terms.
 - 2473. Disposition of fees and fines.
 - 2474. Secretary of state furnish supplies.
 - 2475. Payment of expenses.
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2465. Colorado free employment agencies created.

SECTION 1. Free employment offices are hereby created as follows: One in each city of not less than twenty-five thousand and two in each city containing a population of two hundred thousand or over, for the purpose of receiving applications of persons seeking employment, and applications of persons seeking to employ labor. Such offices shall be designated and known as Colorado Free Employment Offices.

Legislation. Sec. 2465. Act 1907 p. 292 § 1, entitled:

AN ACT

Creating Free Employment Offices in Cities of Over Twenty-five Thousand Population, and Defining the Duties of the Officers Thereof, and Making An Appropriation Therefor.

2466. Superintendent and assistant superintendent of agencies—Term—Salary.

SEC. 2. Within sixty days after this act shall have been in force, the deputy commissioner of labor statistics shall recommend, and the commissioner ex-officio shall appoint a superintendent and assistant superintendent who shall act as clerk for each of the offices created by section 1 of this act, who shall devote their entire time to the duties of their respective offices. The tenure of such appointment shall be two years, unless sooner removed for cause. The salary of each superintendent shall be twelve hundred (1,200) dollars per annum; the salary of such assistant superintendent shall be one thousand (1,000) dollars per annum, together with the proper amounts for defraying the necessary costs of equipping and maintaining the respective offices.

[Section 1 referred to is section 2465.]

Legislation. Sec. 2466. Act 1907 § 2, cited under § 2465.

2467. Offices—Applicants—Records.

SEC. 3. The superintendent of each such free employment office shall, within sixty days after appointment, open an office in such locality as shall have been agreed upon between such superintendent and deputy commissioner of the bureau of labor statistics as being most appropriate for the purpose intended, such office to be provided with a sufficient number of rooms and apartments to enable him to provide, and he shall so provide, a separate room or apartment for the use of women registering for situations or help. Upon the outside of each office in position and manner to secure the fullest public attention shall be placed a sign which shall read in the English language, "Colorado Free Employment Office," and the same shall appear either upon the outside windows or upon signs in such other language as the location of each such office shall render advisable. The superintendent of each such free employment office shall receive and record in books kept

for that purpose names of all persons applying for employment or help, designating opposite the names and addresses of each applicant the character of employment or help desired. Separate registers for applicants for employment shall be kept showing the age, sex, nativity, trade or occupation of each applicant, the cause and duration of non-employment, whether married or single, the number of dependent children, together with such other facts as may be required by the bureau of labor statistics to be used by said bureau. *Provided*, That no special registers shall be open to public inspection at any time, and that statistics and sociological data as the bureau of labor shall require shall be held in confidence by said bureau, and so published as not to reveal the identity of anyone. *And provided, further*, That any applicant who shall decline to furnish answers to the questions contained in special registers shall not thereby forfeit any rights to any employment the office might secure.

Legislation. Sec. 2467. Act 1907 § 3, cited under § 2465.

2468. Weekly report of superintendent.

SEC. 4. Each superintendent shall report on Thursday of each week to the deputy commissioner of the said bureau of labor statistics the number of applications for positions and for help received during the preceding week and the number of positions secured; also those unfilled applications remaining on the books at the beginning of the week. It shall also show the number and character of the positions secured during the preceding week. Upon receipt of these lists and not later than Saturday of each week the deputy commissioner of said bureau of labor statistics shall cause to be printed a sheet showing separately and in combination, the lists received from all such free employment offices.

Legislation. Sec. 2468. Act 1907 § 4, cited under § 2465.

2469. Duty of superintendent.

SEC. 5. It shall be the duty of each such superintendent of a free employment office to immediately put himself in communication with the principal manufacturers, merchants, and other employers of labor, and to use all diligence in securing the co-

operation of the said employers of labor for the purposes and objects of said employment offices. To this end it shall be competent for such superintendents to advertise in the columns of newspapers or other medium for such situations as he has applicants to fill, and he may advertise in a general way for the cooperation of large contractors and employers in such trade journals or special publications as reach such employers, whether such trade or special journals are published within the state of Colorado or not.

Legislation. Sec. 2469. Act 1907 § 5, cited under § 2465.

2470. Annual report of superintendent.

Sec. 6. It shall be the duty of each such superintendent to make report to the said bureau of labor statistics annually, not later than December 1 of each year, concerning the work of his office for the year, together with a statement of the expense of the same, including the charges of an interpreter when necessary, and such report shall be published by the said bureau of labor statistics with its biennial report. Each such superintendent shall also perform such other duties in the collection of statistics of labor as the deputy commissioner of the bureau of labor statistics may require.

Legislation. Sec. 2470. Act 1907 § 6, cited under § 2465.

2471. No fees charged—Penalty for receiving fee.

SEC. 7. No fee or compensation shall be charged or received, directly or indirectly, from persons applying for employment or help through said free employment offices and any superintendent, assistant superintendent or clerk, who shall accept, directly or indirectly, any fee or compensation from any applicant, or from his or her representative, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five (25) dollars nor more than fifty (50) dollars, or imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment at the discretion of the court.

Legislation. Sec. 2471. Act 1907 § 7, cited under § 2465.

2472. Definitions of terms.

SEC. 8. The term "Applicant for employment," as used in this act, shall be construed to mean any person seeking work of any lawful character, and "Applicant for help" shall mean any person or persons seeking help in any legitimate enterprise; and nothing in this act shall be construed to limit the meaning of the term "Work" to manual occupation, but it shall include professional services and all other legitimate services.

Legislation. Sec. 2472. Act 1907 § 8, cited under § 2465.

2473. Disposition of fees and fines.

SEC. 9. All money or moneys received from fees and fines by the said deputy commissioner of labor shall constitute a fund for the purposes of enforcing the provisions of this act, and the said commissioner shall, at the end of each fiscal year, make an account of said fund and pay into the state treasury whatever balance shall remain after paying the necessary disbursements for the purpose of enforcing the provisions of this act.

Legislation. Sec. 2473. Act 1907 § 9, cited under § 2465.

2474. Secretary of state furnish supplies.

SEC. 10. All printing, blanks, blank books, stationery, postage, and such other supplies as may be necessary for the proper conduct of the business of the offices herein created, shall be furnished by the secretary of state upon requisition for the same by the superintendents of the several offices.

Legislation. Sec. 2474. Act 1907 § 10, cited under § 2465.

2475. Payment of expenses.

SEC. 11. All expenses attendant upon the conducting of the several offices herein named shall be paid by this state: *Provided*. Such expense shall not exceed the sum of two thousand (2,000) dollars in any one year; and the state auditor is hereby authorized to draw his warrant on the state treasurer for the same.

Legislation. Sec. 2475. Act 1907 § 11, cited under § 2465.

II. PRIVATE EMPLOYMENT AGENCIES.

Section.

- 2476. Unlawful to open agency without license—Penalty.
- 2477. Cities and towns issue licenses.
- 2478. Application for license.
- 2479. License fee—Bond—Transfer of license.
- 2480. Certificate of license—Receipts for fee paid agents.
- 2481. Fees of employment agents.
- 2482. Penalty for sending female to house of ill repute.
- 2483. Penalty for sending out help without order.
- 2484. Penalty for dividing fees with employers.
- 2485. Register of help desired—Contents—Open to inspection.
- 2486. Penalty for false information or entries—Failure to keep register.
- 2487. Actions against agencies.
- 2488. License not required of charitable associations.
- 2488-A. License—Fees—License posted—Name—Bond—Registry.
- 2488-B. Sending help to place of ill repute—False representations and entries—Saloons—Fees.
- 2488-C. Private employment agency defined.
- 2488-D. Fund from fees and fines.
- 2488-E. Duty of deputy labor commissioner—Penalty.

2476. Unlawful to open agency without license—Penalty.

SEC. 12. That from and after the passage of this act it shall be unlawful for any person or persons to open or establish in any city or town, whether incorporated under special charter or general law, or elsewhere within the limits of the state of Colorado, any intelligence or employment office, for the purpose of procuring or obtaining, for money or other valuable consideration, either directly or indirectly, any work, employment, or occupation for persons seeking the same, or to otherwise engage in the business, or in any way to act as broker between employers and persons seeking work, without first having obtained a license so to do from the city or town where such intelligence or employment office is to be opened or such business is to be carried on. Any person violating any of the provisions of this section shall, upon conviction thereof, for each and every offense, be subject to a fine not exceeding one hundred (100) dollars.

Legislation. Sec. 2476. Act 1891 p. 188 § 1, entitled:

AN ACT

To Regulate the Business of Employment or Intelligence Agents, and Repealing Other Acts.

But the title was changed by special act for that purpose only, 1898 p. 259 to read:

AN ACT

To Regulate the Business of Employment or Intelligence Agents, and Repealing All Acts or Parts of Acts Inconsistent Therewith.

2477. Cities and towns issue licenses.

SEC. 13. Every city or town in this state shall, by ordinance, provide for the issuing of licenses as contemplated by this act, and shall establish such rules and regulations as are not herein provided for the carrying on of the business or occupation for which such license may be issued.

Legislation. Sec. 2477. Act 1891 § 2, cited under § 2476.

2478. Application for license.

SEC. 14. Any person or persons applying for a license under the provisions of this act, shall make application to the city council, or board of trustees, through the city or town clerk, for the same, and shall deposit with the city or town treasurer, in advance, the annual fee for such license, to be evidenced by the receipt of the city or town treasurer endorsed on the said application. If the city council, or board of trustees, refuses to order the issuance of such license to the party or parties applying for the same, the sum so deposited with the city or town treasurer shall be refunded to him, her or them, without any further action of the city council or board of trustees.

Legislation. Sec. 2478. Act 1891 § 3, cited under § 2476.

2479. License fee—Bond—Transfer of license.

SEC. 15. Any person or persons licensed under the provisions of this act shall pay an annual license fee of not more than one hundred (100) dollars in advance, and before such license shall be issued, shall deposit with the city or town treasurer a bond in the penal sum of two thousand (2,000) dollars, with two or more

sureties, to be approved by the officers designated by ordinance; such bond shall be made payable to the city or town where such business is to be carried on, and shall be conditioned that the person or persons, company or corporation applying for the license will comply with this act, and shall pay all damages occasioned to any person by reason of any mis-statement or misrepresentation or fraud or deceit of any person or persons, their agents or employes, in carrying on the business for which they were licensed. If at any time, in the opinion of the mayor and city or town treasurer, the sureties, or any of them, should become irresponsible, the person or persons holding such license shall, upon notice from the city or town treasurer, give a new bond, to be approved as hereinbefore provided. Failure to give a new bond within ten days after such notice shall operate as a revocation of such license, and the license shall be immediately returned to the city or town treasurer, who shall destroy the same. Licenses granted under this act may be transferred by order of the city council or board of trustees, but before such transfer shall be authorized, the applicant for the same shall deposit with the city or town treasurer the sum of five (5) dollars, which shall be endorsed upon the application, and the person to whom such license is transferred shall also deposit such a bond as is required of an applicant for an original license, as hereinbefore described, and to be approved in the same manner.

Legislation. Sec. 2479. Act 1891 § 4, cited under § 2476.

2480. Certificate of license—Receipts for fee paid agents.

Sec. 16. Upon the granting of a license by the city council or board of trustees, under this act, the city or town treasurer shall, within one week after payment of the license fee, issue to the party or parties entitled to the same, a certificate setting forth the fact that such a license has been granted, and it shall be the duty of all persons, who may obtain such certificate, to keep the same publicly exposed to view in a conspicuous place in their office or place of business. Every person paying a fee for employment shall receive a receipt for the same, which receipt shall state in plain terms the agreement between the intelligence or

employment agent or broker, and the person paying such fee, and if the terms of the said agreement are not fulfilled, the said fee shall be forthwith returned to the person who paid the same.

Legislation. Sec. 2480. Act 1891 § 5, cited under § 2476.

2481. Fees of employment agents.

SEC. 17. It shall be lawful for any person or persons or his or their agents, runner or employe, whether acting with or without compensation, engaged in the business of an employment or intelligence agent or broker to charge any person applying for work as a day laborer, mechanic, artisan or household or domestic servant, a fee for his services equal in the case of males to five (5) per cent. and no more on one month's wages and board, and in the case of females three (3) per cent., and no more on one month's wages and board. The limitations imposed by this section shall not apply in any manner to persons or corporations engaged in the business of procuring employment for any other class or classes of persons than those specifically enumerated above.

Legislation. Sec. 2481. Act 1893 p. 260 § 1, amending Act of 1891 p. 190 § 6, cited under § 2476.

2482. Penalty for sending female to house of ill-repute.

SEC. 18. Any person or persons, as aforesaid, keeping an intelligence or employment office, who shall send out any female help to any place of bad repute, house of ill fame or assignation house, or to any house or place of amusement kept for immoral purposes, shall be liable to arrest, and to pay a fine of not less than one hundred (100) dollars, and to imprisonment until such fine is paid; and on conviction thereof, in any court, shall have his or their license rescinded.

Legislation. Sec. 2482. Act 1891 § 7, cited under § 2476.

2483. Penalty for sending out help without order.

SEC. 19. Any person or persons, who shall send out any help, male or female, without having previously obtained a written bona fide order, with proper references of two responsible persons, shall

be subject to the same penalties as are provided in section 7 of this act.

[Section 7 referred to is section 2482.]

Legislation. Sec. 2483. Act 1891 § 8, cited under § 2476.

2484. Penalty for dividing fees with employers.

SEC. 20. Any person or persons, as aforesaid, keeping an intelligence or employment office, sending out help to contractors or other employers of help, and dividing the office fees with subcontractor, and employers of help, or their foreman or any one in their employ, shall, on conviction thereof in any court, have their license at once forfeited, and be fined in a sum of not less than one hundred (100) dollars.

Legislation. Sec. 2484. Act 1891 § 9, cited under § 2476.

2485. Register of help desired—Contents—Open to inspection.

SEC. 21. Every person, company or corporation duly licensed under this act, shall enter upon a register to be kept for that purpose, every order received from any corporation, company or individual desiring the service of any persons seeking work or employment, the name and address of the corporation, company or individual, from whom such order was received, the number of persons wanted, the nature of the work or employment, the town or city, street and number, if any, where such work or employment is to be furnished, the wages to be paid, and a correct record of the names of all persons who have been sent and the time of sending such persons to procure work or employment on such order. No order for help shall be considered a bona fide order unless the same be entered upon the register, as herein provided. There shall also be entered on said register the names of all applicants depositing a fee for the purpose of registering their names with the view of obtaining work or employment, and the nature of the work or employment wanted. The said register shall be open at all reasonable hours to the inspection of any peace official of any municipality in this state.

Legislation. Sec. 2485. Act 1891 § 10, cited under § 2476.

2486. Penalty for false information or entries—Failure to keep register.

SEC. 22. If any person or persons, or his or their agent or employes engaged in the business of employment or intelligence agent or broker, duly licensed, as provided in this act, shall give any false information or shall make any mis-statement or shall make any false promises concerning any work or employment or occupation, or shall fail to keep such a register as is described in the preceding section in this act, or shall wilfully make any false entries in such register, or shall violate any other provisions of this act, for which violation penalties are not hereinbefore provided, shall, upon conviction thereof, for each and every offense, be fined in any sum not exceeding two hundred (200) dollars, and the license under which such person or persons have been permitted to conduct the business of any employment or intelligence officer, shall forthwith be forfeited. \

Legislation. Sec. 2486. Act 1891 § 11, cited under § 2476.

2487. Actions against agencies.

SEC. 23. All claims or suits brought in any court against any employment or intelligence agent, may be brought in the name of the party injured upon the bond deposited with the city or town treasurer by said employment or intelligence agent, as provided in section 4, and may be transferred, as other claims, for damages in civil suits; the amount of damages claimed by the plaintiff, not the penalty named in the bond, shall be the test of the jurisdiction of the court in which the action is brought.

[Section 4 above referred to is section 2479.]

Legislation. Sec. 2487. Act 1891 § 12, cited under § 2476.

2488. License not required of charitable associations.

SEC. 24. Nothing herein shall be construed so as to require any religious or charitable association which may assist in procuring situations or employment for persons seeking the same, to obtain a license so to do under the provisions of this act, provided it receives no payment whatever for its services in the way of fees.

Legislation. Sec. 2488. Act 1891 § 13, cited under § 2476.

2488-A. License—Fees—License posted—Name—Bond—Registry.

SEC. 25. No person, firm or corporation in this state shall open, operate or maintain a private employment agency for hire, or where a fee is charged to either applicant for employment or for help without first obtaining a license for the same from the deputy commissioner of labor statistics. Such license fee in cities of twenty-five thousand (25,000) or more population shall be fifty dollars (\$50) per annum, in all cities and towns containing less than twenty-five thousand (25,000) and more than five thousand population, a fee of twenty-five (\$25) dollars per annum, and in all cities and towns under five thousand (5,000) population a fee of \$10 per annum will be required. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts said employment agency. The license together with a copy of this act, shall be posted in a conspicuous place in each and every employment agency. No agency shall print, publish or paint on any sign, window, or insert in any newspaper or publication, a name similar to that of the Colorado Free Employment Office. The deputy commissioner of labor shall require with each application for a license, a bond in the penal sum of one thousand (\$1,000) dollars with two or more sureties, to be approved by the said deputy commissioner, and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions or requirements of this act.

The said deputy commissioner is authorized to cause an action or actions to be brought on said bond in the name of the people of the state of Colorado, for any violation of any of its conditions, he may also revoke, upon a full hearing, any license whenever in his judgment the party licensed shall have violated any of the provisions of this act. It shall be the duty of every licensed agency to keep a register in which shall be entered the name and address of every applicant. Such licensed agency shall also enter upon a register, the name and address of every person who shall make application for help or servants and the name and nature of the employment for which such help shall be wanted. Such register shall, at all reasonable hours be open to the inspection and examination of the deputy commissioner of labor or his agents.

Legislation. Sec. 2488A. Act 1909 p. 366 § 1, entitled:

AN ACT

Defining Private Employment Agencies, Licensing and Regulating the Same.

This Act largely overlaps the prior legislation of Employment Agencies, §§ 2476-2488. The Penal Section 2482 is certainly superseded by § 2488-B. Section 2488 is duplicated by the proviso of 2488-C. It would seem also that the license now required by the new Act would not be cumulative to the municipal license demanded by the old Act. The Fee bill, § 2481, is certainly substituted by 2488-B, and although there is nothing in the new Act forbidding the division of fees with employers, and certain other minor clauses of the old Act are not covered by the new Act, on the whole it would seem that the new Act was intended to supplant the old.

Judicial Construction on these points is not aided by the stereotyped formula of Sec. 8 of the 1911 Act, "All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

2488-B. Sending help to place of ill repute—False representations and false entries—Saloons—Fees.

SEC. 26. No agency shall send or cause to be sent any female help or servant to any place of bad repute, house of ill fame, or assignation house, any place of questionable character, or to any house or place of amusement kept for immoral purposes. No such licensed agency shall publish or cause to be published any false or fraudulent notices or advertisements or give any false information, or make any false promises concerning or relating to work or employment to any one who shall register for employment, and no licensed agency shall make any false entries in the register to be kept as herein provided. No person, firm or corporation shall conduct the business of any employment office in, or in connection with, any place where intoxicating liquors are sold, or gambling of any character is carried on or indulged in. Where a fee is charged for receiving or filing application for employment, or for help, said fee shall in no case exceed the sum of one dollar (\$1.00) for any person applying for work as a day laborer, mechanic, artisan or household or domestic servant. And in no case shall the fee charged exceed the sum of two (\$2.00) dollars for professional positions. In all cases a receipt shall be given in which shall be stated the name of the applicant, the amount of the fee, the date, the name or character of the work or situation procured and the name of the party from whom the position is to be secured. In case the said applicant shall not obtain a situation or employment through such licensed agency within five (5) days after registration as aforesaid, then said licensed agency shall forthwith repay and

return to such applicant, upon demand being made therefore, the full amount of the fee paid or delivered by said applicant to said licensed agency. Provided said fee is demanded within thirty (30) days after date of registration.

Legislation. Sec. 2488B. Act 1909 § 2, cited under § 2488A.

2488-C. Private employment agency defined.

SEC. 27. A private employment agency is defined to be any person, firm, co-partnership or corporation furnishing employment or help, or giving information as to where employment or help may be secured, or who shall display any employment sign or bulletin, or through the medium of any card, circular, pamphlet or newspaper offer employment or help; and all such persons are subject to the provisions of this act, whether a fee or commission is charged or not. *Provided*, That charitable organizations are not included within the meaning of this act.

Legislation. Sec. 2488C. Act 1909 § 3, cited under § 2488A.

2488-D. Fund from fees and fines.

SEC. 28. All money or moneys received from fees and fines shall be held by the said deputy commissioner of labor and shall constitute a fund for the purpose of enforcing the provisions of this act, and the deputy commissioner shall, at the end of each fiscal year, make a report of said fund and pay into the state treasury whatever balance shall remain after paying the necessary expenses for the purpose of enforcing the provisions of this act.

Legislation. Sec. 2488D. Act 1909 § 4, cited under § 2488A.

2488-E. Duty of deputy labor commissioner—Penalty.

SEC. 29. It shall be the duty of the deputy labor commissioner when informed of any violation of this act, to institute criminal proceedings for the enforcement of its penalties before any court of competent jurisdiction. Any violation of the provisions of this act shall be a misdemeanor and shall be punished by a fine of not less than one hundred (\$100) dollars nor more than two hundred (\$200) dollars for each offense, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment at the discretion of the court.

Legislation. Sec. 2488E. Act 1909 § 5, cited under § 2488A.

CHAPTER XLVII.

EVIDENCE.

Section.

- 2489. Printed statutes—Reports of decisions.
- 2489-A. Certificate of facts shown or not shown by records.
- 2490. Mortuary table admissible as evidence.
- 2491. Table.
- 2492. Proof of handwriting.
- 2493. Copies of proceedings before justice of peace—Certificates of magistracy.
- 2494. Register's certificate—Patent.
- 2495. Exemplifications of laws of other states.
- 2496. Proceedings of cities and towns—Certified copies.
- 2497. Original assessment or certified copy prima facie evidence.
- 2498. Recording of patents to land.
- 2499. Patent may be read in evidence—Copy of record.
- 2500. Patents already recorded.
- 2501. Fees of recorder.
- 2502. Lost deed, bond, note—Affidavit.
- 2503. Certificate of publisher—Contents.
- 2504. Shall be part of record.
- 2505. Names of partners—Partnership—Obligees—Abatement—Rights of defendant.
- 2506. Joint defendants—Proof required—Denying execution.

2489. Printed statutes—Reports of decisions.

SECTION 1. The printed statute books of the United States and of the several states and territories, printed under the authority of such states and territories, the books of reports of decisions of the supreme courts of the United States and of the several states and territories, published by authority of such courts, may be read as evidence, in all courts of this state, of such acts and decisions.

[See Code, sections 390 to 398.]
[See Chapter 118, Public Records.]

[For admission of statutes of Colorado see sections 6301-6304.]
[See also Code, sections 392, 395 and 457.]

Legislation. Sec. 2489. Act of 1861 p. 214 § 1. R. S. p. 309 § 1. G. L. § 1078. G. S. § 1308. The code § 395 contains the same provisions.

CITATIONS.

The statutes of another state limiting the powers of a corporation organized there which does business in this state will not be judicially noticed.—*Order of Pyramids v. Dixon*, 45 C. 95, 100 P. 427.

2489-A. Certificate of facts shown or not shown by records.

SECTION 1a. That the official certificate of the head officer or acting head officer or duly appointed deputy of any of the executive departments of the government of the state of Colorado, as to the contents of, or any fact or matter shown by the records in his department as well as to facts not shown by the records of said department and duly certified to as not existing in the records of said department, shall be received and held in all civil cases as competent prima facie evidence of the facts contained therein and of the non-existence of such facts as are duly certified to as not existing in the records of such department.

Legislation. Sec. 2489A. § 1 Act of 1911, S. B. No. 278, entitled:

AN ACT

To Provide for the Admission in Evidence of Certificates of the Head Officer or Acting Head Officers of any of the Executive Departments of the State of Colorado as to the Contents of and Facts Shown by the Records in Their Offices, and as to Facts not Shown by the Records in Their Said Offices. (Approved May 29, 1911.)

2490. Mortuary table admissible as evidence.

SEC. 2. That in all civil actions, special proceedings or other modes of litigation in courts of justice or before referees or other persons having power and authority to receive evidence, whenever it shall be necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the table set out in section 2 hereof shall be received as evidence, together with other evidence as to

health, constitution, habits and occupation of such person of such expectancy.

[Section 2 referred to is section 2491.]

Legislation. Sec. 2490. Act 1893 p. 261 § 1, entitled:

AN ACT

To Establish Standard Mortuary Tables to be Used as Evidence in Certain Cases.

2491. Table.

SEC. 3. The table referred to in section one hereof shall be as follows:

Completed Age.....10	Expectation.....	48.72
Completed Age.....11	Expectation.....	48.08
Completed Age.....12	Expectation.....	47.44
Completed Age.....13	Expectation.....	46.82
Completed Age.....14	Expectation.....	46.16
Completed Age.....15	Expectation.....	45.50
Completed Age.....16	Expectation.....	44.85
Completed Age.....17	Expectation.....	44.19
Completed Age.....18	Expectation.....	43.53
Completed Age.....19	Expectation.....	42.87
Completed Age.....20	Expectation.....	42.20
Completed Age.....21	Expectation.....	41.53
Completed Age.....22	Expectation.....	40.85
Completed Age.....23	Expectation.....	40.17
Completed Age.....24	Expectation.....	39.49
Completed Age.....25	Expectation.....	38.81
Completed Age.....26	Expectation.....	38.11
Completed Age.....27	Expectation.....	37.43
Completed Age.....28	Expectation.....	36.73
Completed Age.....29	Expectation.....	36.03
Completed Age.....30	Expectation.....	35.33
Completed Age.....31	Expectation.....	34.62
Completed Age.....32	Expectation.....	33.92
Completed Age.....33	Expectation.....	33.21
Completed Age.....34	Expectation.....	32.50
Completed Age.....35	Expectation.....	31.78

Completed Age.....36	Expectation.....	31.07
Completed Age.....37	Expectation.....	30.35
Completed Age.....38	Expectation.....	29.62
Completed Age.....39	Expectation.....	28.90
Completed Age.....40	Expectation.....	28.18
Completed Age.....41	Expectation.....	27.45
Completed Age.....42	Expectation.....	26.72
Completed Age.....43	Expectation.....	25.99
Completed Age.....44	Expectation.....	25.27
Completed Age.....45	Expectation.....	24.54
Completed Age.....46	Expectation.....	23.80
Completed Age.....47	Expectation.....	23.08
Completed Age.....48	Expectation.....	22.36
Completed Age.....49	Expectation.....	21.63
Completed Age.....50	Expectation.....	20.91
Completed Age.....51	Expectation.....	20.20
Completed Age.....52	Expectation.....	19.49
Completed Age.....53	Expectation.....	18.79
Completed Age.....54	Expectation.....	18.09
Completed Age.....55	Expectation.....	17.40
Completed Age.....56	Expectation.....	16.72
Completed Age.....57	Expectation.....	16.05
Completed Age.....58	Expectation.....	15.39
Completed Age.....59	Expectation.....	14.74
Completed Age.....60	Expectation.....	14.09
Completed Age.....61	Expectation.....	13.47
Completed Age.....62	Expectation.....	12.68
Completed Age.....63	Expectation.....	12.26
Completed Age.....64	Expectation.....	11.68
Completed Age.....65	Expectation.....	11.10
Completed Age.....66	Expectation.....	10.54
Completed Age.....67	Expectation.....	10.00
Completed Age.....68	Expectation.....	9.48
Completed Age.....69	Expectation.....	8.98
Completed Age.....70	Expectation.....	8.48
Completed Age.....71	Expectation.....	8.00
Completed Age.....72	Expectation.....	7.54
Completed Age.....73	Expectation.....	7.10

Completed Age.....74	Expectation.....	6.68
Completed Age.....75	Expectation.....	6.28
Completed Age.....76	Expectation.....	5.88
Completed Age.....77	Expectation.....	5.48
Completed Age.....78	Expectation.....	5.10
Completed Age.....79	Expectation.....	4.74
Completed Age.....80	Expectation.....	4.38
Completed Age.....81	Expectation.....	4.04
Completed Age.....82	Expectation.....	3.71
Completed Age.....83	Expectation.....	3.39
Completed Age.....84	Expectation.....	3.08
Completed Age.....85	Expectation.....	2.77
Completed Age.....86	Expectation.....	2.47
Completed Age.....87	Expectation.....	2.19
Completed Age.....88	Expectation.....	1.93
Completed Age.....89	Expectation.....	1.69
Completed Age.....90	Expectation.....	1.42
Completed Age.....91	Expectation.....	1.19
Completed Age.....92	Expectation.....	.98
Completed Age.....93	Expectation.....	.80
Completed Age.....94	Expectation.....	.64
Completed Age.....95	Expectation.....	.50

[Section 1 referred to is section 2490.]

Legislation. Sec. 2491. Act 1893 § 2, cited under § 2490.

CITATIONS.

Prior to this section held that for the purpose of showing the probable duration of life the Carlisle or other approved tables might be used.—*K. P. Ry. Co. v. Lundin*, 3 C. 104.

2492. Proof of handwriting.

SEC. 4. Comparison of a disputed writing, with any writing proved to the satisfaction of the court to be genuine, shall be permitted to be made by witnesses in all trials and proceedings, and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

[Record of marriage in evidence. Section. 4177.]

Legislation. Sec. 2492. Act 1893 p. 264, entitled:

AN ACT

Concerning the Proof of Handwriting.

CITATIONS.

A signing by mark is a written signature and is the subject of expert testimony.—*Ausmus v. Peo.*, 47 C. 189, 107 P. 204.

2493. Copies of proceedings before justice of peace—Certificate of magistracy.

SEC. 5. Copies of the proceedings and judgments before justices of the peace, certified by such justice or justices under their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment; where such certified copy is to be used in any other county than where the justice resides, the same shall not be received as evidence unless a certificate from the county clerk be thereto annexed certifying that on the day the proceeding was had or the judgment rendered, such justice was a justice of the peace, duly commissioned and sworn.

[Copies of records of probate. Section 7262.]

Legislation. Sec. 2493. Act of 1861 p. 214 § 2. R. S. p. 309 § 2. G. L. § 1079. G. S. § 1309.

CITATIONS.

The docket of a justice is only prima facie evidence of facts required to be therein.—*Squires v. Detweiler*, 45 C. 367, 101 P. 342. *Grimes v. Greenblatt*, 47 C. 508, 107 P. 1111. *Hamill v. Ferrier*, 8 A. 271, 45 P. 523.

A summons issued by a justice of the peace but which was not certified was not admissible in evidence.—*Chapman v. Duffy*, 20 A. 473, 79 P. 746.

2494. Register's certificate—Patent.

SEC. 6. The official certificate of any register or receiver of any land office of the United States to any fact or matter on record in his office, shall be received and held competent to prove the fact as certified. The certificate of any such register of the entry or purchase of any tract of land within his district shall be deemed and taken to be evidence of title in the party who made

such entry or purchase, or his heirs and assigns; but a patent for land shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than such register's certificate of the entry and purchase of the same land.

Legislation. Sec 2494. Act of 1861 p. 214 § 3. R. S. p. 309 § 3. G. L. § 1080. G. S. § 1310.

CITATIONS.

To admit in evidence a certificate of entry of a register proof of his signature is necessary.—*Jackson v. McMurray*, 4 C. 76.

The certificate of a register or receiver is competent only to establish matters of record in his office.—*Knoth v. Barclay*, 8 C. 304, 6 P. 926.

That the vendor held only a final receipt and not a patent for land contracted to be sold was not a defect of which the purchaser could complain.—*Godding v. Decker*, 3 A. 204, 32 P. 834.

The receiver's receipt is evidence of title and is entitled to be recorded.—*Dallemand v. Mannon*, 4 A. 264, 35 P. 680.

2495. Exemplifications of laws of other states.

SEC. 7. An exemplification by the secretary of the state, of the laws of the several states and territories, which may be transmitted by order of the executives or legislatures of such states to the governor of this state, and by him deposited in the office of the said secretary, shall be admissible as evidence in any court of this state.

Legislation. Sec. 2495. Act of 1861 p. 215 § 4. R. S. p. 310 § 4. G. L. § 1081. G. S. § 1311.

2496. Proceedings of cities and towns—Certified copies.

SEC. 8. Copies of all papers, books or proceedings or parts thereof appertaining to transactions in their corporate capacity, of any town or city now incorporated, or that may hereafter be incorporated, under any general or special law of this state, certified to be true copies by clerk or keeper of the same, under the seal of such town or city, or under the private seal of said clerk or keeper, if there be no public seal, the clerk or keeper also certifying that he is entrusted with the safe keeping of the original, shall be

received as prima facie evidence of the facts so certified in any court in this state.

Legislation. Sec. 2496. Act of 1861 p. 215 § 7. R. S. p. 311 § 7. G. L. § 1084. G. S. § 1314.

2497. Original assessment, or certified copy, prima facie evidence.

SEC. 9. In all actions in all courts of record and before justices of the peace, the original assessment, or a certified copy thereof, purporting to be made by the corporate authorities of any municipality in this state, under a statute authorizing the same, which determines the cost and expense due from any piece of real estate, or from the owner thereof, for or on account of the construction of any kind of local improvement in the taxing district wherein such property shall be located, or in front of, abutting upon, or adjacent to said realty, within any such municipality, whether the same be organized and existing under special charter or under general incorporation law, shall be and the same is hereby declared to be and shall be so accepted and treated by such tribunals as prima facie evidence of the lawful existence, and due and proper performance of all preliminary steps essential and requisite to make such assessment a legal and valid assessment against the said realty or owner thereof, or both, against whom it appears to be made.

[See also section 5535.]

Legislation. Sec. 2497. Act 1891 p. 192, entitled:

AN ACT

To Make the Original Assessment, or Certified Copy Thereof, for Cost of Local Improvements in Municipalities, Prima Facie Evidence of Performance and Existence of All Prerequisites Essential to Make the Same a Legal and Valid Assessment.

2498. Recording of patents to land.

SEC. 10. That any person to whom any patent to any land, whether agricultural or mineral, situate in this state, may have been issued or may hereafter issue from the government of the United States, may have same recorded in the office of the re-

corder of deeds of the county wherein such lands are situate, upon presentation of the same at the proper office.

[When recorded instrument may be offered in evidence. Section 693.]

Legislation. Sec. 2498. Act 1872 p. 162 § 1. G. L. § 2145. G. S. § 1317.

2499. Patent may be read in evidence—Copy of record.

SEC. 11. Any patent may be read in evidence in the first instance, without further proof of its execution; and a copy of the record of such patent shall be entitled to be read in evidence, under such regulations as are now or may hereafter be provided for the admission of a copy of the record of deeds.

[Records of mining districts prima facie evidence. Section 4258.]

[Affidavit of annual labor prima facie evidence. Section 4209.]

[Copies of papers filed with recorder, prima facie evidence. Section 1266.]

[Copies of official papers prima facie evidence. Section 1357.]

Legislation. Sec. 2499. Act 1872 p. 162 § 2. G. L. § 2146. G. S. § 1318.

2500. Patents already recorded.

SEC. 12. The provisions of this chapter shall be held to apply to patents already recorded.

Legislation. Sec. 2500. Act 1872 p. 163 § 3. G. L. § 2147. G. S. § 1319.

2501. Fees of recorder.

SEC. 13. The fees of the recorder of deeds for the record of such patents shall be the same as fixed for the record of deeds, together with the sum of three dollars for record of any plat contained in such patent.

[For fees of recorder, see section 2538.]

Legislation. Sec. 2501. Act 1872 p. 163 § 4. G. L. § 2148. G. S. § 1320.

2502. Lost deed, bond, note—Affidavit.

SEC. 14. That whenever in the progress of any suit in any court in this state, either party thereto shall rely for its maintenance or defence, in whole or in part, on any deed, bond, note, draft, bill of exchange, letter or any other writing alleged to have been executed, signed or written by the adverse party, and to have been lost or destroyed, the party so relying on the same as evidence in his behalf in the trial of the cause shall not be permitted

to give evidence of the contents thereof by a competent witness or witnesses, until said party, his agent or attorney, shall first make oath to the loss or destruction thereof, and to the substance of the same.

Legislation. Sec. 2502. Act 1870 p. 73 § 1. G. L. § 1085. G. S. § 1321.

CITATIONS.

The evidence of the loss of an instrument is addressed to the court alone and is not a subject on which the jury are to pass.—*Hobson v. Porter*, 2 C. 30.

What is generally sufficient proof of a lost instrument to admit secondary evidence.—*Bruns v. Clase*, 9 C. 225, 11 P. 79.

2503. Certificate of publisher—Contents.

SEC. 15. When any notice or advertisement shall be required, by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, with a printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last paper containing the same, shall be sufficient evidence of the publication therein set forth.

[For additional requirements of legal notices see sections 3931-3135.]

Legislation. Sec. 2503. Act 1861 p. 134 § 1. R. S. p. 45 § 1. G. L. § 6. G. S. § 1315. See code § 49.

2504. Shall be part of record.

SEC. 16. Such notices and certificates of the publication thereof, when so certified, shall be a part of the records of the court.

Legislation. Sec. 2504. Act 1861 p. 135 § 2. R. S. p. 45 § 2. G. L. § 7. G. S. § 1316.

2505. Names of partners—Partnership—Obligees—Abatement—Rights of defendant.

SEC. 17. In trials of actions upon contracts, expressed or implied, where the action is brought by partners, or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the copartnership of the individuals named in such action, or to prove the Christian or surnames of such partners, or joint payees or obligees, but the

names of such copartners, joint payees or obligees shall be presumed to be truly set forth in the declaration, petition or bill: *Provided*, That nothing herein contained shall prevent the defendant from pleading in abatement, as heretofore, or of proving on the trial either that more persons ought to have been made plaintiffs, or that more persons have been made plaintiffs than have the legal right to sue, in which event the defendant's right shall be as at common law.

[Conversations of deceased partner admitted, when. Section 7263.]

Legislation. Sec. 2505. Act 1861 p. 215 § 5. R. S. p. 310 § 5. G. L. § 1082. G. S. § 1312.

2506. Joint defendants—Proof required—Denying execution.

SEC. 18. In action upon contracts, express or implied, against two or more defendants, alleged to have been made or executed by such defendants as partners or joint obligors or payors proof of the joint liability or partnership of the defendants, or their Christian or surnames, shall not in the first instance be required to entitle the plaintiff to judgment, unless such proof be rendered necessary by the filing of pleas denying the execution of such writing, verified by affidavit as required by law.

[Record of proof of will is conclusive evidence of what. Section 7095.]

[Certified copy of stock brand admitted in evidence. Sections 6350 and 6362.]

[Certified copies of articles of incorporation admitted in evidence. Section 849.]

[Effect of certificate of registration of land title. Section 758.]

[When town plat may be introduced in evidence. Sections 6610 and 6617.]

[Minutes of board of directors of irrigation district may be introduced in evidence. Section 3477.]

[Effect of certified copies of maps and statement of reservoir claimant. Section 3186.]

[Copy of game laws prima facie evidence. Section 2864.]

[Effect of railroad company failing to block rails. Section 5508.]

[Killing of stock prima facie evidence of negligence. Section 5483.]

Legislation. Sec. 2506. Act 1861 p. 215 § 6. R. S. p. 310 § 6. G. L. § 1083. G. S. § 1313.

CITATIONS.

A plaintiff is not required to prove the joint liability of defendants sued as partners unless the execution of the instrument sued on is denied by plea verified by affidavit.—*Litchfield v. Daniels*, 1 C. 271, 272.

In assumpsit against partners on a contract not in writing the general issue by one of the defendants without oath operates to deny the partnership.—*Rogers v. Nuckolls*, 2 C. 282.

CHAPTER XLVII-A.

FACTORY INSPECTION.

Section.

- 2506-A. Department of factory inspection established.
 - 2506-B. Safeguards to machinery required—Danger notice.
 - 2506-C. Ventilation—Sanitary precautions.
 - 2506-D. Elevator guards—Trap doors, etc.
 - 2506-E. Duty of inspector to examine.
 - 2506-F. Complaint by employees.
 - 2506-G. Certificate of premises in good order—Revocation—Appeal
—Arbitration.
 - 2506-H. Fire escapes.
 - 2506-J. Inspector construct certain fire escapes—Notice to owner.
 - 2506-K. Water closets—Dressing rooms.
 - 2506-L. Action for damages—Definitions.
 - 2506-M. Right of entry to inspect—Penalties.
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2506-A. Department of factory inspection established.

SECTION 1. That there is hereby established a separate and distinct department to be known as the department of factory inspection of the state of Colorado, which department shall be charged with the inspection of all factories, mills, workshops, bakeries, laundries, stores, hotels, boarding or bunk houses, or any kind of an establishment wherein laborers are employed or machinery used, for the purpose of protecting said employes or guests against damages arising from imperfect or dangerous machinery, or hazardous and unhealthy occupation and regulating sanitary conditions under

which guests are protected or laborers are employed, by providing individual towels in place of roller towels in hotel wash-rooms, and nine foot top sheets for beds, which sheets shall be provided not later than September 1, 1911.

The deputy labor commissioner of the state of Colorado shall be the chief factory inspector under this act; the said chief inspector within five days after the passage of this act, shall recommend, and the secretary of state shall appoint, four deputy factory inspectors, one of whom shall be a woman, and each of said deputy factory inspectors shall receive a salary of twelve hundred (\$1200) dollars per annum with necessary traveling expenses, but said expenses shall in no case exceed the sum of six hundred (\$600) dollars per annum for each deputy factory inspector. *Provided*, That the deputy labor commissioner, being chief factory inspector, shall recommend and the secretary of state appoint, a clerk with an annual salary of twelve hundred (\$1200) dollars per annum, and be it provided, that a stenographer shall be recommended by the deputy labor commissioner and the chief factory inspector and appointed by the secretary of state with an annual salary of twelve hundred (\$1200) dollars per annum; the said appointees shall receive their said salaries upon vouchers issued by the chief factory inspector and paid in the same manner as other state officers of the state of Colorado are paid. *And, be it further provided*, That a fund not to exceed five hundred (\$500.00) dollars shall be appropriated in this bill for the purpose of paying for printing, stationery, postage, and buying such necessary equipment as are necessary in the office of the chief factory inspector; and to provide for any expenses through arbitration as provided in section 7 of this act.

Legislation. Sec. 2506-A. Sec. 1 of Act of 1911, H. B. No. 452, entitled:

AN ACT

Creating a Department of Factory Inspection and Providing Safety Appliances, Fire Escapes, Trap Doors, Gates, Fences and Toilet and Dressing Rooms, Regulating the Ventilation and Sanitary Conditions of Factories, Mills, Workshops, Bakeries, Laundries, Stores, Hotels, Boarding or Bunk Houses; Defining the Word "Person," "Manufacturing Establish-

ment" and the Clause "Every Person Owning or Operating Any Manufacturing Establishment" as Used in This Act; Providing for the Appointment of Factory Inspectors, Defining Their Powers, Duties, Salaries and Expenses Thereof; Providing for the Arbitration of Disputes Arising Under This Act; Providing for An Appropriation to Pay the Salaries and Expenses of the Chief Factory Inspector and His Deputies, and the Liability of the Owner of the Premises for Alterations and Providing Penalties for the Violation of any of the Provisions of this Act, and To Give a Cause of Action for Personal Injuries or Death Caused by Reason of the Violation of Any of the Provisions of This Act. (Approved June 5, 1911.)

There is nothing in the constitution Art. V § 1 as to the title indicating the contents of the act, requiring any such interminable title as the above.

The above interminable Title is copied almost verbatim from the equally objectionable Title of the Act of 1909, p. 373, which Act it undoubtedly abrogates.

2506-B. Safeguards to machinery required—Danger notice.

SEC. 2. That any person, firm, corporation or association operating a factory, mill, workshop, bakery, laundry, store, hotel, or any kind of an establishment wherein laborers are employed, or machinery used shall provide and maintain in use belt shifters or other mechanical contrivances for the purpose of throwing on or off belts or pulleys while running, where the same are practicable with due regard to the nature and purpose of said belts and the dangers to employees therefrom; also reasonable safeguards for all vats, pans, trimmers, cut-offs, gang edger and other saws, planers, cogs, gearings, beltings, shafting, coupling, set screw, line rollers, conveyors, mangers in laundries, and machinery of other or similar description, which it is practicable to guard, and which can be effectively guarded with due regard to the ordinary use of such machinery and appliances, and the dangers to employees therefrom, and with which the employees of any such factory, mill or workshop are liable to come in contact while in the performance of their duties; and if any machinery, or any part thereof, is in a defective condition, and its operation would be extra hazardous because of such defect, or if any machinery is not safeguarded as provided in this act, the use thereof is prohibited, and a notice to that effect shall be attached thereto by the employer immediately on receiving notice of such defect or lack of

safeguard, and such notice shall not be removed until said defect has been remedied or the machine safeguarded as herein provided.

Legislation. Sec. 2506-B. Sec. 2 of Act of 1911, cited under § 2506-A.

2506-C Ventilation—Sanitary precautions.

SEC. 3. That any person, firm, corporation, or association operating a factory, mill, workshop, bakery, laundry, store, hotel, or any kind of an establishment wherein laborers are employed, or machinery used and manual labor is exercised by the way of trade for the purposes of gain within an enclosed room (private houses in which the employees live excepted) shall be provided in each workroom thereof with good sufficient ventilation and kept in a cleanly and sanitary state, and shall be so ventilated as to render harmless, so far as practicable, all gases, vapors, dust or other impurities, generated in the course of the manufacturing or laboring process carried on therein; and if any factory, mill, workshop, bakery, laundry, store, hotel, or any kind of an establishment wherein laborers are employed or machinery used in any enclosed room thereof by which dust is generated and inhaled to an injurious extent by the persons employed therein, conveyors, receptacles or exhaust fans, or other mechanical means, shall be provided and maintained for the purpose of carrying off or receiving and collecting such dust.

Legislation. Sec. 2506-C. Sec. 3 of Act of 1911, cited under § 2506-A.

2506-D. Elevator guards—Trap doors, etc.

SEC. 4. The openings of all hoistways, hatchways, elevators and well holes and stairways in factories, mills, workshops, bakeries, laundries, stores, hotels, or any kind of an establishment wherein laborers are employed, or machinery used shall be protected by good and sufficient trap doors, hatches, fences, gates or other safeguards, and all due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same opened that the same may be used.

Legislation. Sec. 2506-D. Sec. 4 of Act of 1911, cited under § 2506-A.

2506-E. Duty of inspector to examine.

SEC. 5. It shall be the duty of the chief factory inspector, by himself or his duly appointed deputy, to examine as soon as may be after the passage of this act, and thereafter annually and from time to time, all factories, mills, workshops, bakeries, laundries, stores, hotels, or any kind of an establishment wherein laborers are employed or machinery used or appliances therein contained to which the provisions of this act are applicable, for the purpose of determining whether they do conform to such provisions, and to granting or refusing certificates of approval, as hereinafter provided.

Legislation. Sec. 2506-E. Sec. 5 of Act of 1911, cited under § 2506-A.

2506-F. Complaint by employees.

SEC. 6. Any employe of any person, firm, corporation or association operating a factory, mill, workshop, bakery, laundry, store, hotel or any kind of an establishment wherein laborers are employed or machinery used shall notify his employer of any defect in, or failure to guard the machinery, appliances, ways, works and plants, or which or in or about which he is working, when any such defect or failure to guard shall come to the knowledge of any said employe, and if said employer shall fail to remedy such defect then said employe may complain in writing to the chief factory inspector of any such alleged defect in or failure to guard the machinery, appliances, ways, works, and plants, or any alleged violation by such person, firm, corporation or association, of any of the provisions of this act, in the machinery and appliances and premises used by such person, firm, corporation or association and with or about which said employe is working and upon receiving such complaint it shall be the duty of the chief factory inspector, by himself or his deputy, to forthwith make an inspection of the machinery and appliances complained of.

Legislation. Sec. 2506-F. Sec. 6 of Act of 1911, cited under § 2506-A.

2506-G. Certificate of premises in good order—Revocation—Appeal—Arbitration.

SEC. 7. Whenever upon any examination or re-examination of any factory, mill, workshop, bakery, laundry, store, hotel, or any kind of an establishment wherein laborers are employed, or machinery used to which the provisions of this act are applicable, the property so examined and the machinery and appliances therein conform in the judgment of said chief factory inspector to the requirements of this act, he shall thereupon issue to the owner, lessee or operator of any such storehouse, factory, mill, workshop, bakery, laundry, hotel, or any kind of an establishment wherein laborers are employed or machinery used a certificate to that effect, and such certificate shall be prima facie evidence as long as it continues in force of compliance on the part of the person, firm, corporation or association to whom it is issued, with the provisions of this act. Such certificate may be revoked by said chief factory inspector at any time upon written notice to the person, firm, corporation or association holding the same whenever in his opinion after re-examination, conditions and circumstances have so changed as to justify the revocation thereof. A copy of said certificate shall be kept posted in a conspicuous place on every floor of all factories, mills, workshops, bakeries, laundries, stores, hotels, or any kind of any establishment wherein laborers are employed or machinery used to which the provisions of this act are applicable. If, in the judgment of said chief factory inspector, such factory, mill, workshop, bakery, laundry, store, hotel, or any kind of an establishment wherein laborers are employed or machinery is used does not conform to the requirements of this act he shall forthwith personally or by mail serve on the person, firm, corporation or association operating or using such machinery or appliances or occupying such premises a written statement of the requirements of said chief factory inspector, before he will issue a certificate as hereinbefore provided for; and upon said requirements being complied with within a period of thirty days after said written statement has been served as aforesaid, the said chief factory inspector shall forthwith issue such certificate; but if the person, firm, or corporation operating or using said machinery and appliances or occupying such premises shall consider the requirements of said

chief factory inspector unreasonable and impracticable or unnecessarily expensive, he may within ten days after the requirements of said chief factory inspector have been served upon him, appeal therefrom or from any part thereof to three arbitrators to whom shall be submitted the matters and things in dispute, and their findings shall be binding upon said applicant and upon the chief factory inspector. Such appeal shall be in writing, addressed to the chief factory inspector and shall set forth the objection to his requirements, or any part thereof, and shall mention the name of one person who will serve as the representative of said applicant calling for arbitration. Immediately upon the receipt of such notice of appeal, it shall be the duty of the chief factory inspector to appoint a competent person as arbitrator resident in the county from which such appeal comes, and to notify such person so selected, and also the party appealing, stating the cause of the arbitration, and the place, date and time of meeting. These two arbitrators shall select the third within five days and within ten days thereafter, give a hearing on the matters of said appeal, and the findings of these arbitrators by a majority vote shall be reported to the chief factory inspector and to the applicant and shall be binding upon each. The expense of such arbitration shall be borne by the party calling for the arbitration; and if said arbitrators sustain the requirements of said chief factory inspector or any part thereof, said applicant shall within thirty days comply with the findings of said arbitrators, and thereupon said chief factory inspector shall issue his certificate as hereinbefore provided (in section five of this act); but if said arbitrators shall sustain such appeal or any part thereof, the same shall be binding upon said chief factory inspector and any such person, firm, corporation or association shall within thirty days after the finding of the board of arbitrators, comply with the requirements of the chief factory inspector, as amended by said arbitrators, if so amended as herein provided for, and thereupon said chief factory inspector shall forthwith issue to any such person, firm, corporation or association, his certificate as provided, for in section five of this act. *Provided*, That in case said arbitrators shall decide against such chief factory inspector, the costs of such arbitration shall be paid out of the funds for inspection purposes. In case the chief factory inspector is sustained in part

by the arbitrators, the cost of the arbitration shall be divided equitably, in proportion to that decision, the appellant paying such share as the arbitrators may deem fair, the rest to be paid out of said inspection fund.

Legislation. Sec. 2506-G. Sec. 7 of Act of 1911, cited under § 2506-A.

2506-H. Fire escapes.

SEC. 8. In all factories, mills, workshops, offices, bakeries, laundries, stores, hotels, or any other buildings in which people are employed at manual or other labor, proper and sufficient means of escape in case of fire shall be provided by more than one way of egress, and such means of escape shall at all times be kept free from any obstruction; in good repair and ready for use; and a red light shall be provided with the words inscribed thereon "fire escape." All doors leading into or to such factories, mills, workshops, offices, bakeries, laundries, stores, hotels, or other buildings in which people are employed at manual or other labor, shall be so constructed as to open outward when practicable, and shall not be locked, bolted or fastened during working hours as to prevent free egress. Proper and substantial hand rails shall be provided on all stairways in factories, hotels, mills and workshops and other buildings where people are employed at manual or other labor. And in all factories, laundries, mills and workshops in which females are employed the stairs regularly used by them shall be properly screened at the sides and bottom. *And be it further provided*, That hotels, boarding or bunk houses shall have a hemp rope in each room, of not less than three-quarters ($\frac{3}{4}$) inch in thickness, the same to be firmly attached to wall in such a manner that it may be thrown out of the window instantly to allow persons in case of fire, etc., to descend to the ground. The rope must have a knot tied in it at spaces of not more than eighteen (18) inches apart; the ropes to be placed in every room above the second floor; *Provided*, That any rope, ladder, or device for the protection of guests may be used upon approval by the chief factory inspector.

Legislation. Sec. 2506-H. Sec. 8 of Act of 1911, cited under § 2506-A.

2506-J. Inspector construct certain fire escapes—Notice to owner.

SEC. 9. If any factory, mill, workshop, office, bakery, laundry, store, hotel, or other building of three or more stories in height, proper and sufficient means of escape in case of fire are not provided as required by preceding section of this act, the owner or occupant of said building upon notice by the chief factory inspector or any deputy factory inspector employed in the bureau of labor statistics shall construct one or more fire escapes as the same may be found necessary and sufficient. Said fire escape or fire escapes, shall be provided on the outside of such factories, mills, workshops, offices, bakeries, laundries, stores, hotels, or other buildings, connecting with each floor above the first; well fastened and secured and of sufficient strength. Each of such fire escapes shall have landings or balconies not less than six feet in length and three in width, guarded by iron railings not less than three feet in height and embracing at least two windows at each story, and connecting with the interior by easily accessible and unobstructed openings; and the balconies or landings shall be connected by iron stairs not less than 24 inches wide, and the steps to be not less than eight inches tread, placed at not more than an angle of forty-five degrees slant, and protected by well secured handrails on both sides, with a twelve inch wide drop ladder from the lower platform reaching to the ground. Any fire escapes so constructed shall be sufficient. Any other plan or style of fire escape shall be sufficient if approved by the chief factory inspector, but if not so approved the said chief factory inspector or one of the deputy factory inspectors may notify the owner, proprietor or lessee of such factory, mill, workshop, office, bakery, laundry, store, hotel, or other building in which factory or workshop is conducted, or the agent or superintendent, or either of them, in writing, that any such style of fire escape is not sufficient and he may issue an order in writing requiring one or more fire escapes as he shall deem necessary and sufficient to be provided for such factory, mill, workshop, office, bakery, laundry, store, hotel or other buildings in which people are employed at manual or other labor at such location and of such plan and style as shall be specified in such written order. Within thirty days after the service of such order

the number of fire escapes required in such order for such factory, mill, workshop, office, bakery, laundry, store, hotel, or other building, shall be provided therefor, each of which will be either of the plan and style and in accordance with the specifications in said order required or of the plan and style in this section above described and declared sufficient.

The windows or doors of each fire escape shall be located as far as possible consistent with accessibility from the stair ways and elevators, hatchways or openings, and the ladder thereof shall extend to the roof.

Stationary stairs or ladders shall be provided on the inside of each such factory, mill, workshop, office, bakery, laundry, store hotel, or other building where people are employed at manual or other labor from the upper story to the roof as a means of escape in case of fire.

Legislation. Sec. 2506-J. Sec. 9 of Act of 1911, cited under § 2506-A.

2506-K. Water closets—Dressing rooms.

SEC. 10. Every factory, workshop, office, bakery, laundry, store, hotel, or other building in which four or more persons are employed shall be provided within reasonable access with a sufficient number of water closets, earth closets, or privies, for the reasonable use of the persons therein; and whenever male or female persons are employed as aforesaid together, water closets, earth closets or privies separate and apart shall be provided for the use of each sex and plainly so designated, and no person shall be allowed to use such closets or privy assigned the other sex. Such closets shall be properly screened and ventilated and at all times kept in a clean and good sanitary condition.

In factories, laundries, mills, and workshops and in all other places where the labor performed by the operator is of such character that it becomes desirable or necessary to change the clothing wholly or in part before leaving the building at the close of a day's toil, separate dressing rooms shall be provided for women and girls whenever so required by the factory inspector. It shall be the duty of every occupant, whether owner or lessee of any premises so used as to come within the provisions of this act to carry

out the same and to make all changes and additions necessary therefor. In case such changes are made upon the order of the chief factory inspector or of a factory inspector by the lessee of the premises he may at any time within thirty (30) days after the completion thereof bring an action before any justice of the peace, county or district court, having competent jurisdiction against any person having an interest in such premises and may recover such portion of the expense of making such changes and in addition as the court adjudges should justly and equitably be borne by such defendant.

Legislation. Sec. 2506-K. Sec. 10 of Act of 1911, cited under § 2506-A.

2506-L. Action for damages—Definitions.

SEC. 11. In all actions brought to recover damages for personal injuries or death caused by reason of the violation of any of the provisions of this act, it shall be sufficient for the plaintiff to prove in the first instance, in order to establish the liability of the defendant, that the death or injury complained of resulted in consequence of the failure of the person owning or operating the manufacturing establishment where such death, or injury occurred to provide said establishment with safeguards as required by this act, or that the failure to provide such safeguards directly contributed to such death or injury.

Manufacturing establishments, as those words are used in this act, shall mean and include all smelters, oil refineries, cement works, mills of every kind, machine and repair shops, and in addition to the foregoing, any other kind or character of manufacturing establishment, of any nature or description whatsoever, wherein any natural product or other articles or materials of any kind, in a raw or unfinished or incomplete state or condition, are converted into a new or improved or different form.

Wherever the expression occurs in this act in substantially the following words: "Every person owning or operating any manufacturing establishment," or where language similar to that is used, the word "person" in that connection shall be held and construed to mean any person or persons, partnership, corporation, receiver,

trust, trustee, or any other person or combination of persons, either natural or artificial, by whatever name he or they may be called.

Legislation. Sec. 2506-L. Sec. 11 of Act of 1911, cited under § 2506-A.

2506-M. Right of entry to inspect—Penalties.

SEC. 12. The chief factory inspector or any employe of the state may, for the purpose of aiding their county in making a display of the agricultural, mineral and live stock growth and department of factory inspection shall have power to enter any factory, mill, workshop, office, bakery, laundry, store, hotel, or any public or private works where labor is employed or machinery used. Any person, persons, firm, co-partnership, corporation, trust, trustee, their agent, or agents, who shall refuse to allow an inspector or employe of the said department to enter or who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars or be imprisoned in the county jail not to exceed ninety (90) days for each and every offense.

Legislation. Sec. 2506-M. Sec. 12 of Act of 1911, cited under § 2506-A.

CHAPTER XLVIII.

FAIRS.

Section.

- 2507. Exhibits by counties—Agents.
 - 2508. Premiums—Commissioners may remit taxes.
 - 2509. Displays.
 - 2510. Biennial report of fair association.
 - 2511. Premiums for agricultural and live stock displays.
 - 2512. Premiums for horticultural displays.
 - 2513. Rules governing premiums.
 - 2514. State fair fund.
 - 2515. Apportionment of state fair fund.
 - 2516. Payment of premiums.
 - 2517. Policemen for protection of exhibits.
 - 2518. Penalty for destruction of property or exhibits.
 - 2518-A. Appropriation of \$50,000.
 - 2518-B. Payment of premiums.
 - 2518-C. Statement required.
 - 2518-D. Vouchers—Proviso.
 - 2518-E. Warrants to pay vouchers.
 - 2518-F. President and secretary.
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2507. Exhibits by counties—Agent.

SECTION 1. For the purpose of promoting and encouraging the organization of agricultural and mechanical fair associations in the state of Colorado, the commissioners of any county in this products of their county at the Colorado state fair held at Pueblo or at any district fair held in any district in this state, if it shall be deemed expedient by said commissioners, they may appropriate out of the county treasury, for the purpose of having their respective counties suitably represented at said state fair, a sum not exceeding five hundred (500) dollars, and may appoint a suitable person as agent to take charge of the county exhibit and represent said county at the said Colorado state fair.

Legislation. Sec. 2507. Act 1891 p. 17 § 1, entitled:

AN ACT

To Encourage and Promote the Organization of Agricultural and Mechanical Fair Associations in the State of Colorado

Sec. 2 of the Act and also the Immigration Bureau Act of 1889 p. 189 were repealed by Act of 1897 p. 174.

2508. Premiums—Commissioners may remit taxes.

SEC. 2. That the county commissioners of any county in this state, for the purpose of encouraging their respective counties in making a suitable display at any fair held in their counties, may offer special premiums for the best display of the products of the soil, the different grades of thoroughbred stock, fruits of all kinds and dairy products, or whatever else is calculated to encourage and promote agricultural pursuits. And the said county commissioners are authorized and empowered to remit the taxes for state and county purposes, and the municipal authorities of any city or town the municipal taxes on the property, real and personal, of any agricultural and mechanical fair association duly organized under the laws of the state of Colorado, when said property is actually and exclusively employed for the use and purposes of said fair association within their respective county, city or town.

Legislation. Sec. 2508. Act 1891 § 3, cited under § 2507.

2509. Displays.

SEC. 3. The officers of the agricultural college, and all stations established for experimental purposes, as well as the officers of the state school of mines, may in every way possible aid and encourage complete displays of their respective departments at the annual exhibition of the Colorado state fair.

Legislation. Sec. 2509. Act 1891 § 4, cited under § 2509.

2510. Biennial report of fair association.

SEC. 4. Hereafter it shall be the duty of the officers of the Colorado state fair association to make a complete and concise biennial report to the general assembly of the state of Colorado, embracing a detailed statement of the exhibits in all departments,

with such recommendations as may be deemed necessary to promote the stock, agricultural and horticultural interests of the state.

Legislation. Sec. 2510. Act 1891 § 5, cited under § 2507.

2511. Premiums for agricultural and live stock displays.

Sec. 5. The state board of agriculture shall each year offer and award premiums in cash to the counties and citizens of the state making the best displays of agricultural products and of live stock at the state fair held annually at Pueblo by the Pueblo-Colorado state fair association. Said premiums in cash shall not be less in any one year than the sum of two thousand (2,000) dollars, and shall be offered and awarded under rules and regulations adopted by said state board of agriculture.

Legislation. Sec. 2511. Act 1903 p. 220 § 1, entitled:

AN ACT

To Encourage Annual Displays of Live Stock and of the Products of Agriculture, and of Horticulture and All Other Interests of the State, at the State Fair at Pueblo, and to Authorize the State Board of Agriculture and the State Board of Horticulture to Offer Premiums in Cash, and to Provide for the Payment of Such Premiums.

2512. Premiums for horticultural displays.

Sec. 6. The state board of horticulture shall each year offer and award premiums in cash to the counties and citizens of the state making the best horticultural displays at the state fair held annually at Pueblo by the Pueblo-Colorado state fair association. Said premiums in cash shall not be less in any one year than the sum of one thousand seven hundred and fifty (1,750) dollars, and shall be offered and awarded under rules and regulations adopted by the state board of horticulture.

[See also section 2972.]

Legislation. Sec. 2512. Act 1903 § 2, cited under § 2511.

2513. Rules governing premiums.

Sec. 7. It is hereby made the duty of said state board of agriculture and of said state board of horticulture each to prepare

and promulgate rules and regulations governing the awarding of said premiums in cash, and to do everything that in their judgment may be necessary to encourage proper annual displays of live stock and of the products of agriculture and of horticulture, and of other interests of the state, at the state fair, held annually at Pueblo by the Pueblo-Colorado state fair association.

Legislation. Sec. 2513. Act 1903 § 3, cited under § 2511.

2514. State fair fund.

SEC. 8. For the purpose of carrying out the provisions of this act there shall be set aside biennially, in the general appropriation act, a fund to be known as the "State Fair Fund." The general assembly of the state of Colorado, at each regular session, shall appropriate for said state fair fund, out of any moneys in the state treasury not otherwise appropriated, a sum not less than seven thousand five hundred (7,500) dollars. Said sum of not less than seven thousand five hundred (7,500) dollars shall be apportioned for the purposes herein provided for, between said state board of agriculture and said state board of horticulture, in the ratio indicated in sections 1 and 2 of this act. The said sum of not less than seven thousand five hundred (7,500) dollars shall be offered and awarded by said state board of agriculture and by said state board of horticulture, in accordance with the provisions of sections 1 and 2 of this act.

[Section 1 referred to is section 2511.]

[Section 2 referred to is section 2512.]

Legislation. Sec. 2514. Act 1903 § 4, cited under § 2511.

2515. Apportionment of state fair fund.

SEC. 9. Said state fair fund shall be apportioned by the auditor of state between the state board of agriculture and the state board of horticulture for the purposes herein provided for, in accordance with the provisions of section 4 of this act. That portion of the state fair fund set aside for the said state board of agriculture shall be under the exclusive control of the state board of agriculture, but shall be used only for the purposes provided in this act. The auditor of state is hereby authorized to

draw warrants upon the state fair fund for the payment of vouchers certified by the president of the state board of agriculture and attested by the secretary thereof. That portion of the state fair fund set aside for the state board of horticulture shall be under the exclusive control of the state board of horticulture, but shall be used only for the purposes provided in this act. The auditor of state is hereby authorized to draw warrants upon the state fair fund for the payment of vouchers certified by the president of the state board of horticulture and attested by the secretary thereof.

[Section 4 referred to is section 2514.]

Legislation. Sec. 2515. Act 1903 § 5, cited under § 2511.

2516. Payment of premiums.

SEC. 10. The president and secretary of the state board of agriculture and the president and secretary of the state board of horticulture, respectively, shall, when the premiums herein provided for have been awarded, execute their vouchers in payment of such premiums in favor of the county or counties and person or persons entitled thereto, and shall deliver the same. Upon presentation to him for said vouchers the auditor of state shall draw warrants for the payment thereof from the state fair fund.

Legislation. Sec. 2516. Act 1903 § 6, cited under § 2511.

2517. Policemen for protection of exhibits.

SEC. 11. The board of directors, or executive committee of any agricultural, horticultural or stock society of this state, is hereby authorized to appoint as many citizens of this state as policemen as shall be necessary for their exhibitions, whose duty it shall be to preserve order within and around the grounds of said society, to protect the property within said grounds, to eject all persons who shall be improperly within the grounds of said society, or who shall be guilty of disorderly conduct, or who shall neglect, or refuse to pay the fee or observe the rules prescribed by the society. Said policemen shall have the same power, during the time said exhibition shall continue, that a constable may have by law to keep the peace, and in addition, during such time, may

arrest any person for the commission of any offense mentioned in section two.

Legislation. Sec. 2517. Act 1887 p. 23 § 1, entitled:

AN ACT

To Enable Agricultural and Other Like Societies to Extend a More Perfect Protection to Their Property and the Property of Exhibitors at Fairs, and to Allow the Appointment of Special Policemen for that Purpose.

2518. Penalty for destruction of property or exhibits.

SEC. 12. Any person who shall wilfully destroy the property of exhibitors, visitors or lessees on the fair grounds, or shall hinder or obstruct the officers or policemen in the performance of their duties, or shall wrongfully or maliciously gain admission to the fair grounds contrary to the rules of said society, or without paying the established fees, during any fair of said society, shall be deemed guilty of a misdemeanor, and upon conviction, shall be subject to a fine not less than five, nor more than twenty-five dollars, or imprisonment not exceeding thirty days, at the discretion of the justice of the peace before whom the offender may be tried, and all fines so imposed and collected under this section shall be paid into the treasury of the county in which such trial may be held.

Legislation. Sec. 2518. Act 1887 § 2, cited under § 2517.

2518-A. Appropriation of \$50,000.

SEC. 12a. That fifty thousand dollars (\$50,000), or so much thereof as may be necessary to carry out the provisions of this act, is hereby appropriated out of the moneys of the state treasury not otherwise appropriated, to the state board of agriculture and the state board of horticulture twenty-five thousand dollars (\$25,000) for the year 1911 and twenty-five thousand dollars (\$25,000) for the year 1912, for the benefit of persons, associations or corporations holding annual fairs or exhibitions of agricultural, horticultural and industrial products and live stock.

Legislation. Sec. 2518-A. Sec. 1 of Act of 1911, H. B. No. 124, Entitled

AN ACT

To Promote the Agricultural, Horticultural, Industrial and Live Stock Industries of the State of Colorado, and Making an Appropriation for the Purpose of Carrying out the Provisions Therefor. (This Act was filed in the office of the Secretary of State on June 5, 1911, without the Governor's approval.)

2518-B. Payment of premiums.

SEC. 12b. That said appropriation for the years 1911 and 1912, shall be appropriated to the state board of agriculture and the state board of horticulture, constituting a state fair board, to be awarded by the said board for cash premiums for agricultural, horticultural, industrial and live stock exhibits, to such persons, associations or corporations as shall prior to the passage of this act have held an annual exhibition for the period of not less than four (4) consecutive days in any one year of agricultural, horticultural and industrial products and live stock, and to such persons, associations or corporations as shall hereafter hold such annual exhibition for the period of not less than four (4) days in any one year; *And, provided, further,* That not more than one fair held in any one county shall be entitled to participate in the benefits of this act, and that such fair in each county shall be held at the county seat thereof, unless otherwise determined by the board of county commissioners of the county.

Legislation. Sec. 2518-B. Sec. 2 of Act of 1911, cited under § 2518-A.

2518-C. Statement required.

SEC. 12c. On or before November 1st of the year 1911, and annually thereafter, any person, association or corporation desiring to participate in the moneys appropriated for the purpose of carrying out the provisions of this act, shall file with said state fair board a statement, under oath, setting forth the name of said person, or association, the time and place at which an annual exhibition of agricultural, horticultural, industrial and live stock exhibits was held, together with a copy of the premium list, accompanied with a statement of the amount of premiums actually paid, to whom so paid, and a list of the judges by whom said premiums were awarded.

Legislation. Sec. 2518-C. Sec. 3 of Act of 1911, cited under § 2518-A.

2518-D. Vouchers—Proviso.

SEC. 12d. Upon filing the statement as provided in section 3 of this act, the president of the state fair board shall, on or before November 30th of the same year in which such statement is filed, issue a voucher to said person, association or corporation, duly attested by the secretary thereof, for an amount of money equal to fifty (50) per cent. of the premiums actually paid by said person, association or corporation at its annual exhibition for the year 1911, and each year thereafter, provided such statement shall be filed with the state fair board on or before November 1st of the year in which such fair or industrial exhibition shall have been held; *And provided further*, That no person, corporation or association claiming the benefits of this act shall be entitled to an amount in excess of ten thousand dollars (\$10,000) on account of premiums, as herein provided for, in any one year; *And, provided further*, That in event of fifty (50) per cent. of the premiums actually paid out in any one year by all persons, associations and corporations filing statements as provided in section 3 of this act amounting to more than the amount appropriated for such year, then the amount appropriated for such year shall be divided pro rata among such persons, associations and corporations according to the respective amounts so paid out.

Legislation. Sec. 2518-D. Sec. 4 of Act of 1911, cited under § 2518-A.

2518-E. Warrants to pay vouchers.

SEC. 12e. The auditor of the state is hereby authorized to draw warrants upon the moneys appropriated for the purpose of carrying out the provisions of this act, for the payment of vouchers certified to by the president of the state fair board, and attested by the secretary thereof.

Legislation. Sec. 2518-E. Sec. 5 of Act of 1911, cited under § 2518-A.

2518-F. President and secretary.

SEC. 12f. The president of the said state board of agriculture shall be the president of the state fair board hereby constituted, and the said state fair board shall select one of their number to act as secretary of said state fair board.

Legislation. Sec. 2518-F. Sec. 6 of Act of 1911, cited under § 2518-A. Act of 1909 p. 38 made an appropriation for the years 1909 and 1910. Sec. 7 of the Act was the Emergency Clause.

CHAPTER XLIX.

FEES AND SALARIES.

- I. FEES OF STATE, COUNTY AND PRECINCT OFFICERS.—
2519-2556.
 - II. SALARIES OF STATE, COUNTY AND PRECINCT OFFICERS.
—2557-2586.
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I. FEES OF STATE, COUNTY AND PRECINCT OFFICERS.

Section.

- 2519. Secretary of state—Fees.
- 2520. Notaries—Fees.
- 2521. Classification of counties to regulate fees.
- 2522. Adams county of fourth class.
- 2523. Arapahoe county of fourth class.
- 2523-A. Crowley county of fourth class.
- 2523-B. Jackson county of fifth class.
- 2524. Larimer county of third class.
- 2525. Mineral county of fourth class.
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 - 2545. Officers post table of fees in offices.
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 - 2554. Fees collected paid to treasurer—Fee funds.
 - 2555. Penalty for refusing to pay fees to treasurer.
 - 2556. Office hours.
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2519. Fees of secretary of state.

SECTION 1. It shall be the duty of the secretary of state to collect as fees the following sums of money for papers officially executed, and other official work which may be done in his office, that is to say: For each military commission, two dollars and fifty cents; for each notary public's commission, five dollars; for each foreign commission, five dollars; for any other commission or appointment to which the seal of the state shall be affixed, two dollars and fifty cents; for each official certificate, one dollar; for administering each oath, fifty cents; for filing and recording each certificate of incorporation, not exceeding five folios of one hundred words, two dollars and fifty cents; and for each additional folio, fifteen cents; for all transcripts or copies of papers and records, fifteen cents per folio of one hundred words; and he shall not deliver any such commission, or file for record any such certificate, or do any such official work until the fee or sum so fixed to be collected therefor shall first be paid to him. He shall pay all fees and sums of moneys so collected by him to the state treasurer monthly, taking the treasurer's receipt for the same,

and shall make an itemized statement of all such collections, showing the amounts thereof, in his annual report for each year.

[For fees chargeable by the secretary of state on receiving papers pertaining to corporations see sections 901 to 912.]

[For fees chargeable by state engineer. Section 3332.]

Legislation. Sec. 2519. G. L. § 1161. G. S. § 1416. See § 901.

Act 1861 p. 395. R. S. p. 324 § 17, fixed the fees of the territorial secretary.

CITATIONS.

The act of 1885 (Sec. 901) amended this section as to fees for filing certificate of incorporation.—*Edwards v. D. & R. G. R. Co.*, 13 C. 64, 21 P. 1011.

2520. Fees of notaries.

SEC. 2. The fees of notaries public shall be as follows: For noting a bond, bill of exchange, or promissory note for protest, fifty cents; for each protest and record of the same, seventy-five cents; for each notice of protest, fifty cents; for each certificate and seal, fifty cents; for one acknowledgment of a deed or other instrument in writing, fifty cents; for each additional acknowledgment, twenty-five cents; for taking depositions, per folio of one hundred words, fifteen cents; for swearing any person to an affidavit, with certificate and seal, twenty-five cents; for all other services, the same fees as justices of the peace for like services.

[For fees of justice of the peace see section 2539.]

Legislation. Sec. 2520. G. L. § 1164. G. S. § 1419.

2521. Classification of counties.

SEC. 3. That for the purpose of fixing fees, chargeable and to be collected by county, precinct and other officers, the several counties of this state are hereby divided into five classes according to population, as ascertained by the federal census of the year 1890, which classes shall be known as the first, second, third, fourth and fifth, as follows: Counties containing a population of over fifty thousand, to-wit: Arapahoe, shall belong to and be known as counties of the first class. Counties containing a population of less than fifty thousand and over twenty thousand, to-wit: El Paso and Pueblo, shall belong to and be known as counties

of the second class. Counties containing a population of less than twenty thousand and over ten thousand, to-wit: Boulder, Lake, Las Animas and Weld, shall belong to and be known as counties of the third class. Counties containing a population of less than ten thousand and over three thousand, to-wit: Chaffee, Clear Creek, Conejos, Costilla, Douglas, Eagle, Fremont, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Larimer, LaPlata, Logan, Mesa, Montrose, Otero, Ouray, Park, Pitkin, Rio Grande, Saguache, and San Miguel, shall belong to and be known as counties of the fourth class. Counties containing a population of less than three thousand, Archuleta, Baca, Bent, Cheyenne, Custer, Delta, Dolores, Elbert, Grand, Hinsdale, Kiowa, Kit Carson, Lincoln, Montezuma, Morgan, Phillips, Prowers, Rio Blanco, Routt, San Juan, Sedgwick, Summit, Washington and Yuma shall belong to and be known as counties of the fifth class.

Legislation. Sec. 2521. Act 1891 p. 200 § 1, entitled:

AN ACT

Concerning Fees, Providing Penalties for Violation of This Act, and to Repeal All Acts and Parts of Acts in Conflict With the Same.

The last previous classification was Act of 1887 p. 267 which was a substitute for G. S. § 1425, Act of 1883 p. 153 which took the place of Act 1881 p. 122 which amended G. L. § 1170.

Art. XIV § 15 of the constitution requires a classification of counties for purpose of fixing fees of county and precinct officers. There was no classification under the territory but there was a special fee bill for Arapahoe county. Act 1874 p. 146, Act 1876 p. 72, and occasional sections local to certain other counties.

CITATIONS.

The act of 1881 classifying counties referred to as to Chaffee county.—*Whitney v. Teichfuss*, 11 C. 556, 19 P. 507.

The title of this act of 1891 is not obnoxious to the constitution.—*Airy v. People*, 21 C. 145, 40 P. 362.

The act of 1891 referred to as to the classification of Teller county.—*Frost v. Pfeiffer*, 26 C. 343, 58 P. 149.

The fee act and the salary act of 1891 both referred to in considering the fees of a county clerk and also as to the salary of a justice of the peace.—*Henderson v. Pueblo county*, 4 A. 304, 35 P. 881. *Arapahoe County v. Clapp*, 9 A. 162, 48 P. 158.

The word "emoluments" as it appears in this act should be taken to embrace all receipts not included within the terms "fees" or "commissions".—*Arapahoe County v. Hall*, 9 A. 542, 49 P. 371.

2522. Adams county of fourth class.

SEC. 4. For the purpose of establishing the fees to be collected by the county, precinct and other officers, said county of Adams shall be a county of the fourth class; and, for the purpose of establishing and fixing the salaries of the said officers, said county of Adams shall be a county of division "A" of the fourth class.

[See also section 2565.]

Legislation. Sec. 2522. Act 1901 p. 136 § 11. The Act creating Adams county.

2523. Arapahoe county of fourth class.

SEC. 5. For the purpose of fixing fees chargeable and to be collected by county, district, precinct and other officers, said county of South Arapahoe shall be a county of the fourth class; and for the purpose of providing for and regulating the compensation of county, district, precinct and other officers, the said county of South Arapahoe shall be a county of the fourth class, division "A," and for the purpose of providing for and regulating the compensation of county superintendents of schools, the said county of South Arapahoe shall be a county of the fourth class.

[Arapahoe county is placed in Division "A" of fourth-class counties by section 2565.]

Legislation. Sec. 2523. Act 1903 p. 168 § 1a, amending Act 1901 p. 142 § 13; the Act creating the county of South Arapahoe.

2523-A. Crowley County of fourth class.

SEC. 5a. For the purpose of fixing fees chargeable and to be collected by county, precinct and other officers, and for the purpose of providing for and regulating the compensation of county, precinct and other officers, the said county of Crowley shall be a county of the fourth class, in division "A."

Legislation. Sec. 2523-A. Sec. 12 of Act of 1911, cited under § 1094-A.

2523-B. Jackson County of fifth class.

SEC. 5b. For the purpose of fixing fees chargeable and to be collected by county, precinct and other officers, and for the

purpose of providing for and regulating the compensation of county, precinct and other officers, the said county of **Jackson** shall be a county of the fifth class.

Legislation. Sec. 2523-B. Sec. 12 of Act of 1909, creating Jackson County.

2524. Larimer county of third class.

SEC. 6. That for the purpose of fixing fees chargeable and to be collected by county, precinct and other officers therein, the county of Larimer shall belong to and be known as a county of the third class.

Legislation. Sec. 2524. Act 1905 p. 235 § 1, entitled:

AN ACT

To Fix the Classification of Larimer County Concerning the Fees to be Collected by County Officers Therein.

2525. Mineral county of fourth class.

SEC. 7. That for the purpose of establishing the fees of county, precinct and other officers, said county of Mineral shall be a county of 4th class, and for the purpose of establishing the salaries of said officers, said county of Mineral shall be a county of class "B" of the fourth class.

[For the purpose of fixing salaries Mineral county is placed in the fifth class by section 2565.]

Legislation. Sec. 2525. Act 1893 p. 96 § 9, the Act creating Mineral county.

2525-A. Mineral County of fifth class.

SEC. 7a. That for the purpose of fixing fees chargeable and to be collected by county, precinct and other officers therein, the county of Mineral shall belong to and be known as a county of the fifth class.

Legislation. Sec. 2525-A. Sec. 1 of Act of 1911, H. B. No. 126, Entitled

AN ACT

To Fix the Classification of Mineral County Concerning the Fees To Be Collected by County and Precinct Officers Therein.

(This Act was filed in the office of the Secretary of State on June 5, 1911, without the Governor's approval.)

This Act refers to fees only. Sec. 2525 refers to fees and salaries.

2525-B. Moffat County of fifth class.

SEC. 7b. For the purpose of fixing fees chargeable and to be collected by county, precinct and other officers, and for the purpose of providing for and regulating the compensation of county, precinct and other officers, the said county of Moffat shall be a county of the fifth class.

Legislation. Sec. 2525-B. Sec. 18 of Act of 1911, cited under § 1124-A.

2525-C. Otero County of third class.

SEC. 7c. That for the purpose of fixing fees chargeable and to be collected by county, precinct and other officers therein, the county of Otero shall belong to and be known as a county of the third class.

Legislation. Sec. 2525C. § 1 of Act of 1909 p. 452, entitled:

AN ACT

To Fix the Classification of Otero County Concerning the Fees to be Collected by County Officers Therein.

2526. Teller county of second class.

SEC. 8. For the purpose of fixing fees chargeable and to be collected by county, precinct and other officers, and for the purpose of providing for and regulating the compensation of county, precinct and other officers, the said county of Teller shall be a county of the second class.

[See also section 2565.]

Legislation. Sec. 2526. Act 1899 p. 364 § 12, the Act creating Teller county.

2527. Fees chargeable.

SEC. 9. The legal fees to be charged and collected by the several officers hereinafter named, shall be as follows, in the respective classes to which they belong, to-wit:

Legislation. Sec. 2527. Act 1891 § 2, cited under § 2521.

2528. Fees of clerks of courts.

SEC. 10. Fees of clerks of courts of record, except the supreme court. For filing each paper and exhibit required to be filed, in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, twelve and one-half cents; fifth class, fifteen cents.

For issuing each summons or other process, not herein expressly named and sealing the same, in counties of the first class, twenty-five cents; second class, thirty-five cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For issuing each subpoena (provided only one subpoena shall be issued for every four witnesses, unless expressly requested), in counties of the first class, fifteen cents; second class, twenty-five cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For taking, approving and filing bond for costs, in counties of the first class, twenty-five cents; second class, thirty-five cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For filing all papers on appeal from justice of the peace, and taking appeal bond and issuing supersedeas thereon when required, in counties of the first class, seventy-five cents; second class, one dollar; third class, one dollar and twenty-five cents; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For each entering of a suit on docket for trial, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty-five cents.

For entering each order, rule or proceeding in court, and counting the whole entry for one, in counties of the first class, thirty cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents. *Provided*, That for entering order of adjournment or excuse of juror the fee shall be fifteen cents in counties of all classes.

For each discontinuance, retraxit, or nonsuit, in counties of the first class, fifteen cents; second class, twenty cents; third class, thirty cents; fourth class, forty cents; fifth class, fifty cents.

For issuing each dedimus to take deposition in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and fifty cents.

For calling and swearing each jury, in counties of the first class, fifteen cents; second class, twenty-five cents; third class, thirty-five cents; fourth class, fifty cents; fifth class, seventy-five cents, and for each additional juror in counties of all classes, five cents.

For swearing each witness in court, in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, twelve and one-half cents; fifth class, fifteen cents.

For swearing any person to an affidavit and filing the same, in counties of the first class, fifteen cents; second class, twenty cents; third class, twenty-five cents; fourth class, thirty cents; fifth class, thirty-five cents.

For entering each decree, or final judgment or rule, per folio in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty-five cents.

For issuing each writ of habeas corpus, certiorari or procedendo in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and fifty cents.

For issuing each writ of injunction, quo warranto or mandamus, in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and fifty cents.

For issuing each writ of attachment or replevin in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

For swearing each officer to take charge of jury, in counties of the first class, ten cents; second class, ten cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For issuing each execution, and docketing and filing the same

in counties of the first class, seventy-five cents; second class, one dollar; third class, one dollar and twenty-five cents; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For making bill of costs, for each execution, entering the same of record in the fee book, being one charge, in counties of the first class, fifty cents; second class, fifty cents; third class, sixty cents; fourth class, seventy-five cents; fifth class, seventy-five cents.

For entering sheriff's return on each execution in execution docket, per folio, in counties of the first class, seven and one-half cents; second class, ten cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For entering the satisfaction of judgment in counties of the first class, fifteen cents; second class, twenty cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For all other special entries per folio, in counties of the first class, seven and one-half cents; second class, ten cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty-five cents.

For each certificate or affidavit of attendance on court, or before the grand jury, of witnesses, jurors and bailiffs and filing the same, in counties of the first class, seven and one-half cents; second class, ten cents; third class, twelve and one-half cents; fourth class, fifteen cents; fifth class, twenty cents.

For taking and approving appeal, or any other bond, each, in counties of the first class, twenty-five cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For entering the appearance of an attorney in counties of the first class, ten cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For issuing each attachment of a witness or other person, in counties of the first class, twenty-five cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For issuing each venire facias, in counties of the first class, thirty-five cents; second class, fifty cents; third class, sixty cents; fourth class, seventy-five cents; fifth class, one dollar.

For making a complete record, or for making a copy of any judgment or order in any case, per folio, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For certifying and sealing the same, when required, in counties of the first class, twenty cents; second class, thirty-five cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For taking deposition, per folio, and certifying to the same, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty-five cents.

For taking acknowledgment of deed, power of attorney or other instrument of writing and certifying and sealing the same, in counties of the first class, twenty-five cents; second class, thirty cents; third class, forty cents; fourth class, fifty cents; fifth class, fifty cents.

For filing and recording declaration of intention to become a citizen of the United States, in counties of the first class, one dollar; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, two dollars and fifty cents.

For final naturalization, including oath, recording copy, certificate and seal, in counties of the first class, two dollars; second class, two dollars and fifty cents; third class, three dollars; fourth class, four dollars; fifth class, four dollars.

For taking each recognizance in court and entering the same of record, in counties of the first class, thirty-five cents; second class, fifty cents; third class, sixty cents; fourth class, seventy-five cents; fifth class, seventy-five cents.

For arraigning each prisoner at the bar, in counties of the first class, twenty-five cents; second class, thirty cents; third

class, thirty-five cents; fourth class, thirty-five cents; fifth class, fifty cents.

For entering judgment of conviction, in counties of the first class, thirty-five cents; second class, fifty cents; third class, sixty cents; fourth class, seventy-five cents; fifth class, seventy-five cents.

For copy of indictment, when required, per folio, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For copy of list of grand and petit jurors, when required in a criminal case, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For filing all papers on appeal from county court to the district court in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar; fifth class, one dollar.

For entering transcript of judgment of any case, in judgment docket, in counties of the first class, twenty-five cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each entry in indices, register of actions, in the counties of the first class, five cents; second class, five cents; third class, ten cents; fourth class, ten cents; fifth class, fifteen cents.

For making copies of summons, attachment writs, injunction writs or any other paper or process, in any case, per folio, in counties of the first class, ten cents; second class, ten cents; third class, ten cents; fourth class, ten cents; fifth class, ten cents. Also for certificates of "No suit pending," including seal, first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

Clerks of courts of record may require in advance, on account of their fees, a deposit of five dollars, and no more at any one time, nor until the former deposit has been exhausted.

[Fees in assignment cases. Section 218.]

[Docket fee in land registration. Section 811.]

Legislation. Sec. 2528. Act 1891 § 3, cited under § 2521. This Act repealed Act 1885 p. 210 § 5, which fixed the fees of clerks of courts of record in Class A, consisting of Arapahoe and Lake counties.

As to fees in juvenile court cases see § 590.

The prior acts fixing fee of clerks of courts were G. S. § 1431, G. L. § 1171, as to first class counties. G. S. § 1440, G. L. § 1180, as to counties of the second class and G. S. § 1449, G. L. § 1189, as to counties of the third class.

CITATIONS.

The laws of 1864 referred to as to the fees of county clerks acting as clerks of probate courts.—*Leonard v. Garfield County*, 8 A. 342, 46 P. 217.

2529. Fees of clerk of district court.

SEC. 11. From and after the passage of this act, the clerks of the district courts of this state shall continue to charge and collect fees as provided by law: but the fees so collected shall be the money of the county in which the clerk is acting and shall by him be accounted for, as hereinafter provided.

Legislation. Sec. 2529. Act 1891 p. 309 § 4, entitled:

AN ACT

To Provide for the Payment of Salaries to Certain Officers, to Provide for the Disposition of Certain Fees, and to Repeal All Acts Inconsistent Therewith.

CITATIONS.

This section cited in holding that the title to this act is not obnoxious to the constitution.—*Airy v. Peo.*, 21 C. 146, 40 P. 362.

2530. Books of account—Report.

SEC. 12. Each clerk of the district court shall keep books of account showing by items all the business transacted in his office for which by law fees are paid. He shall, on the first Monday in January and July of each year, file with the clerk of the board of county commissioners an abstract of said books, under oath, showing the amount of business transacted in his office, and the money collected therefor, for the six months next preceding such report. It shall be the duty of the board of county commissioners to audit such reports and correct and adjust the same in accordance with the facts. In counties of the third, fourth and fifth classes

the balance found in the hands of the clerk of the district court over and above the amount due such officer as compensation for services, clerk hire, and other necessary and legitimate expenses, shall be paid by such officer into the county treasury so soon as his accounts shall be audited by the board of county commissioners. In counties of the first class and counties of the second class, all fees collected by clerks of the district courts or their deputies shall be paid into the county treasury and be kept by the county treasurer in a separate fund to be known as the "District court fee fund," and all salaries and compensation of clerks of the district court and their deputies shall be paid out of this fund and no other. If at the end of the year any balance is left to the credit of said fund after all salaries and compensation for clerical assistance is paid, such balance shall be credited to the general county fund. Each district court or the judge or judges thereof shall provide from time to time, by rules, for the making of deposits by litigants to meet costs made by them, or such other rule or order as shall insure the payment to the county of all fees earned by or through the office of the clerk of its district court.

Legislation. Sec. 2530. Act 1891 § 5, cited under § 2529.

CITATIONS.

This section referred to in holding that the title to this act is not obnoxious to the constitution.—*Airy v. Peo.*, 21 C. 146, 40 P. 362.

The fee fund mentioned in this section is the fund out of which the clerk's salary is to be paid and witness fees are not a part of the fund.—*Adams v. Peo.*, 25 C. 539, 55 P. 806.

2531. Fee book a public record.

SEC. 13. The fee book to be kept by each clerk, as herein provided for, shall be a public record, subject to public inspection, like all other records of his office.

Legislation. Sec. 2531. Act 1891 § 6, cited under § 2529.

CITATIONS.

This section referred to with others as relating more particularly to the subject of fees than of salaries.—*Airy v. Peo.*, 21 C. 146, 40 P. 362.

CITATIONS CONTINUED.

The clerk may use the register of actions as a fee book and it will be admissible in an action on his bond.—*Cooper v. Peo.*, 28 C. 94, 63 P. 314.

2532. Fees of sheriff.

SEC. 14. For serving and returning summons or other writ or process not herein specified, with or without complaint attached, on each party served, in counties of the first class, fifty cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar and twenty-five cents.

For making return on a summons not served, for each party, in counties of the first class, thirty cents; second class, thirty cents; third class, fifty cents; fourth class, seventy-five cents; fifth class, one dollar and twenty-five cents.

For serving and returning each subpoena on each witness, in counties of the first class, twenty cents; second class, twenty-five cents; third class, forty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For making return on a subpoena not served, in counties of the first class, twenty cents; second class, twenty-five cents; third class, forty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For serving each juror, in counties of the first class, twenty cents; second class, twenty-five cents; third class, thirty-five cents; fourth class, fifty cents; fifth class, fifty cents.

For serving and returning writ of attachment or replevin, on each party, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, two dollars; fifth class, two dollars.

For serving garnishee summons, on each party, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

Mileage for each mile actually and necessarily traveled in serving each writ, subpoena or other process, in counties of the first class, seven and one-half cents; second class, seven and one-half cents; third class, ten cents; fourth class, ten cents; fifth class, ten cents; *Provided*, That actual, and not constructive mileage shall be allowed in all cases; and where more than one warrant is served by any officer on one trip, the actual mileage only shall be allowed such officer, and the actual mileage shall be apportioned among the several warrants served on the trip.

In making demand for payment on execution, when payment is not made, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar; fifth class, one dollar and twenty-five cents.

For levying execution, writ of attachment or replevin on personal property, besides actual expenses necessarily incurred, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and seventy-five cents.

In counties of the first class no custodian shall be appointed by the sheriff to take custody of goods by him attached, nor shall any deputy be placed in charge thereof, unless the plaintiff or his attorney shall request the appointment of such custodian in writing; and such custodian or deputy shall receive, in counties of the first class, two dollars and fifty cents per diem of twelve hours, or fraction thereof, which shall be taxed as costs in the case; in counties of all other classes no custodian appointed by the sheriff to take goods in custody by him attached, shall receive more than two dollars and fifty cents per diem of twelve hours, or fraction thereof, which shall be taxed as costs in the case.

For making and filing for record a certificate of levy on attachment or other cases, in counties of the first class, sixty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For committing and discharging prisoners to and from the county jail, in counties of the first class, twenty cents; second class, twenty cents; third class, thirty-five cents; fourth class, fifty cents; fifth class, seventy-five cents.

For dieting each prisoner per diem such reasonable compensation shall be allowed by the board of county commissioners, not to exceed sixty cents nor less than thirty-five cents in counties of the first and second class; and not to exceed fifty cents in counties of the second and third classes, and not to exceed seventy-five cents in counties of the fourth and fifth classes.

For serving writ with aid of posse comitatus with actual expenses necessarily incurred in executing said writ, in counties of the first class, seven dollars and fifty cents, and in counties of all other classes, five dollars. For serving same without aid, in counties of the first, fourth and fifth classes, two dollars; in counties of the second class, one dollar and twenty-five cents, and in counties of the third class, one dollar and fifty cents.

For attending before any judge, court not being in session, with prisoners with writ of habeas corpus for each day of twelve hours, or fraction thereof, in counties of the first and fifth classes, two dollars; second class, one dollar and twenty-five cents; third class, one dollar and fifty cents, and of the fourth class, one dollar and seventy-five cents.

For attending courts of record when in session, per diem of twelve hours, or fraction thereof, in counties of the first class, two dollars; second class, two dollars; third class, two dollars and fifty cents; fourth class, three dollars; fifth class, three dollars; *Provided*, That the attendance upon the county court shall be certified by the judge of said court at the close of each month.

For advertising property for sale, besides actual expenses, in counties of the first, fourth and fifth classes, one dollar; in counties of the second class, fifty cents and in counties of the third class, seventy-five cents.

For making certificate of sale previous to execution of deed, or on sales of personal property, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

Executing and acknowledging deed of sale of real estate, in counties of the first class, two dollars; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, two dollars and fifty cents.

For taking, approving and returning bonds in any case, in counties of the first class, one dollar; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

For executing capias or warrant in criminal cases, on each prisoner named therein, in counties of the first class, fifty cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

For transporting insane or other prisoners, besides the actual expenses necessarily incurred, ten cents per mile; in counties of the second class, twelve and one-half cents per mile; in counties of the third class, fifteen cents per mile; in counties of the fourth class, twenty cents per mile; in counties of the fifth class, twenty cents per mile; and for the service of the mittimus, or other process or order, whether written or otherwise, in transporting prisoners, in counties of the first class, seven and one-half cents per mile; in counties of the second class, seven and one-half cents per mile; in counties of the third class, ten cents per mile; in counties of the fourth class, ten cents per mile; in counties of the fifth class, ten cents per mile. *Provided, however,* That such mileage shall be only by one officer, and no mileage shall be charged upon the guards attending the officer in the custody of the prisoner, or prisoners; *Provided, further,* That the guard or guards, attending the officer in charge of the prisoner, or prisoners, shall receive, besides the expenses necessarily incurred, the sum of two dollars and fifty cents per diem of twelve hours, or fraction thereof, to be paid out of the county treasury.

For his services in sales of real estate on execution, decree, order of court, or other court process, besides actual expenses, in counties of the first class, on all sums bid under one thousand dollars, five dollars; on all sums bid over one thousand dollars, one-half of one per cent.; for his services, in sales of real estate on execution, decree, order of court, or other court process, besides actual expenses, in counties of the second class, four dollars; of the third class, five dollars; of the fourth and fifth classes, six dollars. *Provided,* That such commission shall in no case exceed the sum of twenty-five dollars.

Commissions on money collected by sale of personal property, in counties of the first class, on all sums bid under five hundred dollars, two per cent.; on all sums bid over five hundred dollars and under one thousand dollars, one and one-half per cent.; on all sums bid over one thousand dollars, one per cent.; and two and one-half per cent., two per cent. and one and one-half per cent., respectively, in counties of the second class, and three per cent., two and one-half per cent. and two per cent., respectively, in counties of the third class; and three and one-half per cent., three per cent. and two and one-half per cent., respectively, in counties of the fourth class; and four per cent., three and one-half per cent. and three per cent., respectively, in counties of the fifth class. *Provided*, That no fee shall be charged for an auctioneer, or other person, for making sales of personal property; *And provided*, That in no case shall such commission exceed the sum of \$40.00, except in counties of the first class.

Commissions on money collected or settlements made, without sale, after writ of execution, attachment or replevin has been placed in his hands and levy, or demand for payment of the amount has been made on the proper party, in counties of the first class, in all amounts under five hundred dollars, two per cent.; on all amounts over five hundred dollars and under one thousand dollars, one and one-half per cent.; on all amounts over one thousand dollars, one per cent.; *Provided, however*, That the commission in no case shall exceed the sum of one hundred dollars; *Provided, further*, That the plaintiff, or any person making any settlement, shall be liable to the sheriff for his commissions.

For pursuing and capturing, or pursuit without capture, when previously authorized by the county commissioners, except that such authorization shall not be necessary in counties of the first class, each prisoner charged with the commission of any crime denominated a felony, beyond the limits of said county, in counties of every class, all the necessary expenses of such pursuit, upon a verified itemized account being presented for the same, together with three dollars per diem in counties of the first class, and two dollars per diem in counties of all other classes of twelve hours, for the time occupied in such pursuit. The constable shall be entitled to the same fees for pursuing, capturing and transporting

criminals, as hereinbefore provided for sheriffs in these classes, to be paid out of the county treasury.

For serving and returning writ of ne exeat or body attachment, in counties of every class, one dollar and fifty cents.

For serving copy of execution when making levy on shares of stock under execution, on each party served, in counties of the first class, seventy-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents.

For making certificates of levy on shares, or otherwise, in counties of the first class, fifty cents; second class, fifty cents; third class, seventy-five cents; fourth class, seventy-five cents; fifth class, one dollar.

For making return on execution, in counties of the first class, fifty cents; second class, fifty cents; third class, seventy-five cents; fourth class, seventy-five cents; fifth class, one dollar.

[Fee of sheriff for attending execution. Section 2035.]

[Fees for enforcing game laws a personal perquisite. Sections 2863 and 2870.]

Legislation. Sec. 2532. Act 1907 p. 392 § 1, amending § 4 of Act 1891 p. 205, cited under § 2521. The 1891 Act superseded Act 1885 p. 212 § 6, which amended G. S. §§ 1432, 1441, 1450. G. L. §§ 1172, 1181, 1190.

CITATIONS.

When no fees were fixed for the care of property the sheriff was entitled to reasonable charges.—*City Bank v. Tucker*, 7 C. 222, 3 P. 217.

When an officer serves a number of writs in the same case upon a single journey he is entitled to receive but one mileage fee.—*Larimer County v. Love*, 15 C. 431, 25 P. 557.

Construction of the fee act and salary act of 1891 as to what fees a sheriff is entitled thereunder.—*Sargent v. LaPlata County*, 21 C. 159, 162, 40 P. 366.

Sheriff may charge railroad fare as expenses although he has a railroad pass which he did not use.—*Id.* 169.

An order made upon a motion to retax costs was construed as an adjudication of the propriety of the sheriff's bill then on file.—*First nat. Bank v. Follett*, 46 C. 455, 104 P. 955.

Sheriff's fees and mileage when collected must be paid to the county as salary and traveling expenses are all that he is entitled to. He should collect his fees in advance.—*Bransom v. Larimer County*, 5 A. 234, 37 P. 957.

2533. Constructive mileage not allowed.

SEC. 15. Whenever any sheriff or constable shall serve two or more papers on the same person, or on different persons, at the same time and place in the same action, he may charge mileage from his office to the place of service for distance necessarily traveled, once each way, only, and no constructive mileage shall be allowed.

Legislation. Sec. 2533. Act 1891 p. 324 § 2, entitled:

AN ACT

In Relation to the Compensation of Sheriffs and Constables in Certain Cases and Providing a Penalty for Any Violation of the Provisions Hereof.

2534. Officers serve papers on tender of fees.

SEC. 16. No sheriff or constable shall refuse to serve any writ, summons or notice, at the request of any person entitled to such service, when offered or tendered the fees allowed by law for such service; nor shall he charge, demand or receive any greater sum or compensation or allowance.

Legislation. Sec. 2534. Act 1891 § 3, cited under § 2533.

2535. Penalty for violation of act.

SEC. 17. Any sheriff or constable who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars for each offense, and he shall be liable to any person aggrieved to pay all loss, damage and expenses (including attorney fees in prosecuting or suing such officer), which such aggrieved person may sustain by reason of such violation. The sheriff and his deputies, or either of them, shall be subject to the provisions of this act.

[This act comprises sections 2572 and 2533-2535.]

Legislation. Sec. 2535. Act 1891 § 4, cited under § 2533.

2536. Fees of county judges.

SEC. 18. The county judge shall collect the following fees for services performed by him. For appointing an executor, ad-

ministrator, guardian, conservator or trustee, and issuing letters under seal, in counties of the first class, fifty cents; second class, one dollar and fifty cents; third class, two dollars; fourth class, three dollars; fifth class, three dollars.

For taking bond of executor, administrator or guardian and approving the same in counties of the first class, twenty-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For each examination into the sufficiency of the official bond of each executor, administrator, guardian, conservator, trustee or other person, and entering the order required by law, in counties of the first class, twelve and one-half cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For administering oath to executor, administrator, guardian, in counties of the first class, five cents; second class, twenty cents; third class, thirty cents; fourth class, forty cents; fifth class, fifty cents.

For taking proof of will or codicil, when not contested, in counties of the first class, fifty cents; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, two dollars and fifty cents; if contested, for each day actually occupied in hearing such contest, in counties of the first class, one dollar; second class, three dollars; third class, four dollars; fourth and fifth classes, five dollars each.

For recording any will, codicil or other paper, for each one hundred words, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For examining each inventory, bill of sale or account current filed by an executor, administrator, guardian or conservator, in counties of the first class, twelve and one-half cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For recording the settlement of executors, administrators, guardians or conservators, for all copies of orders, papers and proceedings, for exemplified copies of records, per folio of one

hundred words, in counties of the first class, ten cents; second class, twelve and one-half cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For each order limiting the time for exhibiting the claims of creditors, in counties of the first class, twelve and one-half cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For each order of distribution, in counties of the first class, twenty-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and twenty-five cents; fifth class, one dollar and fifty cents.

For making order of publication, in counties of the first class, seven and one-half cents; second class, twenty cents; third class, twenty-five cents; fourth class, thirty-five cents.

For certifying any will, paper, proceeding or order, in counties of the first class, twelve and one-half cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, sixty cents.

For allowing appeal to district court, in counties of the first class, twelve and one-half cents; second class, thirty-five cents; third class, fifty cents; fourth class, seventy-five cents; fifth class, one dollar.

For administering oath and certificate thereof, in counties of the first class, seven and one-half cents; second class, twenty cents; third class, thirty cents; fourth class, forty cents; fifth class, fifty cents.

For administering oath to witness, in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, twelve and one-half cents; fifth class, fifteen cents.

For filing any papers pertaining to any estate, in counties of the first class, two and one-half cents; second class, seven and one-half cents; third class, ten cents; fourth class, twelve and one-half cents; fifth class, fifteen cents.

For taking and approving any bond not heretofore specified, in counties of the first class, twelve and one-half cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For revoking letters testamentary, or of guardianship, conservatorship or trusteeship, in counties of the first class, twenty-five cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For administering oath to jury, in counties of the first class, seven and one-half cents; second class, twenty cents; third class, twenty-five cents; fourth class, thirty cents; fifth class, thirty-five cents.

For taking acknowledgments of interest in counties of the first class, twelve and one-half cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For issuing venire for jury, in counties of the first class, seven and one-half cents; second class, twenty-five cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For entering verdict, in counties of the first class, seven and one-half cents; second class, twenty cents; third class, twenty-five cents; fourth class, thirty-five cents; fifth class, fifty cents.

For allowing or disallowing demands against an estate and recording the same in counties of the first class, seven and one-half cents; second class, twenty-five cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For entering order of continuance, in counties of the first class, five cents; second class, twenty cents; third class, twenty-five cents; fourth class, thirty cents; fifth class, forty cents.

For decree in final settlement of an estate, in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For each hearing on petition for leasing, mortgaging or sale of real estate in counties of the first class, twenty-five cents; second class, one dollar; third class, one dollar and fifty cents; fourth class, two dollars; fifth class, two dollars and fifty cents.

For examining and approving or disapproving each sale or leasing of real estate, in counties of the first class, twenty-five cents; second class, seventy-five cents; third class, one dollar;

fourth class, one dollar and fifty cents; fifth class, one dollar and seventy-five cents.

For each hearing on petition of executor, administrator, guardian, conservator or trustee to loan money of the estate, in counties of the first class, thirty-seven and one-half cents; second class, one dollar; third class, one dollar and fifty cents; fourth class, two dollars; fifth class, two dollars. For each order granting or refusing such petition, in counties of the first class, twelve and one-half cents; second class, forty cents; third class, fifty cents; fourth class, seventy-five cents; fifth class, one dollar.

For each hearing of preliminary or dilatory motion in counties of the first class, thirty-seven and one-half cents; second class, one dollar; third class, one dollar and twenty-five cents; fourth class, one dollar and fifty cents; fifth class, one dollar and fifty cents.

For each trial or hearing of a cause instituted in the county court, for each day actually occupied by him in such hearing or trial, to be taxed as costs against the unsuccessful party, in counties of the first class, one dollar; second class, two dollars; third class, three dollars; fourth class, four dollars; fifth class, five dollars.

For each hearing on exceptions or motions filed on report of an executor, administrator, guardian, conservator or trustee, each hearing in counties of the first class, fifty cents; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, three dollars.

For hearing each contested claim against an estate, and entering decision in same in counties of the first class, fifty cents; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, three dollars.

For each hearing on application to revoke letters testamentary, or of administration, guardianship, conservatorship or trusteeship, to be taxed against the unsuccessful party, in counties of the first class, fifty cents; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars and fifty cents; fifth class, three dollars.

In all cases of administration where the estate is less than twenty-five hundred dollars in value, the combined fees of the county judge and clerk of county court shall in no case exceed

the sum of twenty-five dollars in counties of the first class, and in counties of all other classes the sum of fifty dollars.

For solemnizing marriages, in counties of the first class, one dollar; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars; fifth class, two dollars.

Legislation. Sec. 2536. Act 1891 p. 208 § 5, cited under § 2521. The text supersedes Act 1885 p. 215 § 9, which amended G. S. §§ 1435, 1444, 1453 G. L. §§ 1177, 1186, 1195.

CITATIONS.

A county judge is not entitled to collect from the county a trial fee in a misdemeanor case disposed of by nolle prosequi.—*Garfield County v. Beardsley*, 18 A. 57, 70 P. 155.

2537. Fees of county treasurer.

SEC. 19. The county treasurer shall charge and receive the following fees and commissions:

Upon all moneys received by him for town and city taxes, whether such towns or cities be incorporated under the general laws or by special charter, and anything in said charter to the contrary notwithstanding, and upon all school taxes in counties of the first class, one per cent.; in counties of the second class, one per cent.; in counties of every other class, one per cent. on school taxes, and two per cent. on town and city taxes.

Upon all moneys received by him for taxes of every other kind in counties of the first class, one per cent.; second class, one and one-half per cent.; third class, two per cent.; fourth class, three per cent.; fifth class, five per cent.

For receiving all moneys other than taxes in counties of every class, one per cent.

For each certificate of purchase, in counties of every class, twenty-five cents; for each tract therein described in counties of every class, five cents.

For each certificate of redemption in counties of every class, twenty-five cents; for each tract therein described in counties of every class, five cents.

For making treasurer's deed in counties of every class, one

dollar, if such deed contains one description, and for every subsequent description, five cents.

[For fees of county clerk as registrar of titles. Section 812.]

Legislation. Sec. 2537. Act 1897 p. 159 § 6, amending § 6 Act 1891 p. 211, cited under § 2521, which superseded Act 1885 p. 214 § 7, which amended G. S. §§ 1433, 1442, 1451. G. L. §§ 1173, 1182, 1191.

CITATIONS.

Money due a treasurer under the law in force in 1887 was properly payable out of the general fund by warrant.—*San Juan County v. Oliver*, 7 A. 517, 44 P. 363.

The county treasurer is entitled to fees provided in this section, for collecting a city tax.—*Denver v. Hart*, 10 A. 454, 51 P. 534.

The treasurer is not entitled to commission on money paid for tax redemption nor to any fee for entering an assignment of a certificate of purchase.—*Mitchell v. Wheeler*, 20 A. 161, 77 P. 362.

2538. Fees of county clerk.

SEC. 20. For filing each paper, except tax schedules and claims against the county, for which no fee shall be allowed in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, fifteen cents; fifth class, fifteen cents.

For taking and certifying affidavit, except claims against the county, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For each certificate and seal, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For each bond and license, in counties of the first class, twenty-five cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar.

For advertising, including copy for a newspaper publication, in counties of the first class, twenty-five cents; second class, fifty cents; third class, seventy-five cents; fourth class, one dollar; fifth class, one dollar and twenty-five cents.

For every certificate of magistracy under seal, in counties of the first class, twenty-five cents; second class, twenty-five cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For every instrument authorized to be recorded, for first one hundred words, including entry in reception book, certificate or filing and of record, and indexing, where there is only one grantor and one grantee, in counties of the first class, fifteen cents; second class, thirty cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For each additional folio, in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, twelve and one-half cents; fifth class, fifteen cents.

For each additional entry in index, in counties of the first class, five cents; second class, seven and one-half cents; third class, seven and one-half cents; fourth class, ten cents; fifth class, ten cents.

For taking acknowledgments, in counties of the first class, twenty-five cents; second class, twenty-five cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For copies of record, per one hundred words, in counties of the first class, five cents; second class, seven and one-half cents; third class, seven and one-half cents; fourth class, ten cents; fifth class, ten cents.

For recording town plats, for one hundred lots or less, in counties of the first class, two dollars; second class, three dollars; third class, four dollars; fourth class, five dollars; fifth class, six dollars. For each additional lot, in counties of the first class, one cent; second class, one cent; third class, one and one-fourth cents; fourth class, one and one-half cents; fifth class, one and one-half cents.

For entering subsequent taxes paid, in record of tax sale for each tract, in counties of every class, five cents, each entry counting as one tract.

For entering certificate of redemption in tax sale record, in

counties of every class, twenty-five cents and five cents additional for each tract therein described, each entry counting as one tract.

For making abstracts of title, in counties of the first class, for the first five conveyances or entries, twenty cents each; for each subsequent entry, ten cents; in counties of the second class, thirty cents and fifteen cents, respectively; in counties of the third class, fifty cents and thirty cents respectively; in counties of the fourth and fifth classes, fifty cents and thirty cents respectively.

For services as clerk of board of county commissioners, including the making of the proper record of the proceedings of said board, writing up warrants, making the reports required by law and such other work as may be required by the board of county commissioners, or by law, in matters pertaining to the business of the county, in counties of all classes five dollars per day for each day actually employed, eight hours constituting one day's work.

[Hunting license fees and the disposition thereof. Section 2838.]

[Fees for recording assignment of wages. Section 7016.]

[Fee for recording and making copy of chattel mortgage. Section 517.]

[For salary as clerk of board of commissioners see also section 1255.]

[Fee for recording town plats. Section 6613.]

[Fee for filing affidavit of partnership. Section 4779.]

[Fee for filing description of docked horse. Section 1928.]

[Fee for noting marginal release of mortgage. Section 6890.]

Legislation. Sec. 2538. Act 1907 p. 404 § 7, amending Act 1891 p. 212 § 7, cited under § 2521. The last paragraph of this section abrogates § 1255.

The 1891 act superseded Act 1895 p. 214 § 8, which amended G. S. §§ 1434, 1443, 1452. G. L. §§ 1174, 1183, 1192.

CITATIONS.

The county clerk holds but one office. The per diem for his services as clerk of the board of commissioners is a fee and is part of the fee fund.—*Henderson v. Pueblo County*, 4 A. 304, 35 P. 881.

The "order of court" mentioned in G. S. Sec. 1452 meant an order of the board. The fee for filing papers includes claims, whether allowed or rejected.—*Leonard v. Garfield County*, 8 A. 341, 46 P. 216.

2539. Fees of justice of the peace.

SEC. 21. For docketing each case in counties of the first class, five cents; second class, fifteen cents; third class, twenty-

five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For issuing each summons or other writ not herein specified in counties of the first class, ten cents; second class, thirty-five cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each attachment against property, in counties of the first class, twenty cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For attachment against persons for contempt, in counties of the first class, fifteen cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each mittimus in counties of the first class, fifteen cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each subpoena, provided that only one subpoena shall be issued for every four witnesses, in counties of the first class, ten cents; second class, thirty cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For each venire in counties of the first class, ten cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each execution or order of sale, in counties of the first class, ten cents; second class, thirty cents; third class, forty cents; fourth class, forty cents; fifth class, fifty cents.

For each writ of restitution, in counties of the first class, twenty-five cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each warrant, or order of arrest, in counties of the first class, fifteen cents; second class, forty cents; third class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For order on jailer for person or persons, in counties of the first class, ten cents; second class, twenty-five cents; third class, twenty-five cents; fourth class, sixty cents; fifth class, seventy-five cents.

For each writ of forcible entry or detainer, in counties of the first class, twenty-five cents; second class, forty cents; third

class, fifty cents; fourth class, sixty cents; fifth class, seventy-five cents.

For hearing each preliminary or dilatory motion, in counties of the first class, ten cents; second class, twenty cents; third class, twenty-five cents; fourth class, fifty cents; fifth class, fifty cents.

For judgments on merits or for costs in counties of the first class, twenty-five cents; second class, thirty cents; third class, forty cents; fourth class, fifty cents; fifth class, fifty cents.

For dismissal or continuance, in counties of the first class, twenty-five cents; second class, thirty cents; third class, thirty cents; fourth class, forty cents; fifth class, sixty cents.

For taking verdict, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, thirty cents.

For making up docket or for transcript of docket or writing each one hundred words, in counties of the first class, five cents; second class, ten cents; third class, fifteen cents; fourth class, twenty cents; fifth class, twenty cents.

For each certificate in counties of the first class, twenty-five cents; second class, twenty-five cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For swearing jury, in counties of the first class, ten cents; second class, twenty cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For administering each oath, in counties of the first class, five cents; second class, ten cents; third class, fifteen cents; fourth class, fifteen cents; fifth class, fifteen cents.

For filing each paper, in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, ten cents; fifth class, ten cents.

For taking each bond, or undertaking, in counties of the first class, twenty cents; second class, thirty cents; third class, forty cents; fourth class, forty cents; fifth class, forty cents.

For appointing special constable, in counties of the first class, ten cents; second class, ten cents; third class, ten cents; fourth class, ten cents; fifth class, ten cents.

For trying any case, in counties of the first class, seventy-five cents; second class, one dollar; third class, one dollar; fourth class, one dollar; fifth class, one dollar.

For taking each acknowledgment, in counties of the first class, twenty-five cents; second class, twenty-five cents; third class, twenty-five cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For taking deposition, of each one hundred words, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For performing duties as coroner, same fees as coroner for like services.

For marrying each couple, and making returns, in counties of the first class, one dollar; second class, one dollar and fifty cents; third class, two dollars; fourth class, two dollars; fifth class, two dollars.

In all criminal trials and examinations of persons on charges of criminal offenses against the laws of the state, it shall be the duty of justices of the peace to tax up the costs in each case according to the provisions of this act; and it is made the duty of all constables and justices of the peace to so far as possible collect such costs from the parties liable to pay the same.

Provided, That the total amount of justice fees taxed in any civil action, shall not exceed in counties of the first class, the sum of five dollars; second class, the sum of seven dollars; third class, the sum of eight dollars; fourth class, eight dollars; fifth class, eight dollars; *Provided, further*, That the sum paid any justice of the peace out of the county treasury, in counties of all classes, for costs and fees, in criminal cases, shall not exceed in any month the sum of sixty dollars.

[Fee for assistance in canvass of votes. Section 2273.]

Legislation. Sec. 2539. Act 1891 p. 216 § 13, cited under § 2521.

The text superseded act 1885 p. 217 § 11, which amended G. S. §§ 1433, 1447, 1456. G. L. §§ 1176, 1184, 1193.

CITATIONS.

When costs in garnishment proceedings are chargeable in the original action and when chargeable as in a separate and distinct action.—*Nylan v. Renhard*, 10 A. 47, 49 P. 266.

2540. Fees of constable.

Sec. 22. For serving and returning each summons, or other writ or process not otherwise herein provided for, on each person, in counties of the first class, twenty-five cents; second class, forty cents; third class, sixty cents; fourth class, sixty cents; fifth class, sixty cents.

For serving and returning each warrant or order of arrest, on each person served, in counties of the first class, twenty-five cents; second class, forty cents; third class, sixty cents; fourth class, sixty cents; fifth class, sixty cents.

For serving and returning each subpoena on each person served, in counties of the first class, ten cents; second class, twenty-five cents; third class, thirty-five cents; fourth class, thirty-five cents; fifth class, thirty-five cents.

For summoning each juror in counties of the first class, ten cents; second class, twenty cents; third class, thirty cents; fourth class, thirty cents; fifth class, thirty cents.

For serving, levying and returning execution or writ of attachment on personal property, besides actual expenses necessarily incurred, in counties of the first class, fifty cents; second class, sixty cents; third class, seventy-five cents; fourth class, seventy-five cents; fifth class, seventy-five cents.

For serving and returning writ of replevin, in counties of the first class, fifty cents; second class, sixty cents; third class, seventy-five cents; fourth class, eighty-five cents; fifth class, one dollar.

For returning each writ, subpoena or other process not served, in counties of the first class, ten cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, thirty-five cents.

For conveying prisoners to and from jail, in counties of the first class, twenty-five cents; second class, fifty cents; third class, fifty cents; fourth class, fifty cents; fifth class, fifty cents.

For serving writ with aid of posse comitatus, five dollars in all counties.

For taking and approving any bond, in counties of the first class, twenty cents; second class, thirty cents; third class, forty cents; fourth class, fifty cents; fifth class, sixty cents.

For each mile actually and necessarily traveled, in all cases in counties of the first class, five cents; second class, seven and one-half cents; third class, ten cents; fourth class, ten cents; fifth class, ten cents.

For transporting prisoners, per mile, in counties of the first class, five cents; second class, fifteen cents; third class, twenty cents; fourth class, twenty-five cents; fifth class, twenty-five cents.

For attending each jury trial, occupying one-half day or less, in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar and twenty-five cents; fourth class, one dollar and twenty-five cents; fifth class, one dollar and twenty-five cents. *Provided*, That the said amount shall be applied on the payment of his costs earned during the actual trial of the case. For each additional six hours, in counties of the first class, fifty cents; second class, seventy-five cents; third class, one dollar; fourth class, one dollar; fifth class, one dollar.

On all sums of money, collected by sale, under one hundred dollars, in counties of the first class, three per cent.; second class, four per cent.; third class, five per cent.; fourth class, six per cent.; fifth class, six per cent. On all sums collected by sale, in excess of one hundred dollars, in counties of the first class, one and one-half per cent.; second class, two per cent.; third class, two and one-half per cent.; fourth class, three per cent.; fifth class, four per cent.

Provided, That the total amount of constable fees in any civil action, exclusive of commissions on moneys collected, shall not exceed, in counties of the first class, the sum of six dollars; second class, the sum of seven dollars; third class, the sum of eight dollars; fourth class, the sum of nine dollars; fifth class, ten dollars. *And provided, further*, That the sum paid to any constable out of the county treasury in the counties of the first and

second classes, for fees in criminal cases, shall not in any month exceed the sum of fifty dollars.

[Fees of election constables. Section 2271.]

[See sections 2533, 2534, 2535.]

Legislation. Sec. 2540. Act 1891 p. 218 § 14, cited under § 2521, which Act superseded Act 1886 p. 218 § 12, which amended G. S. §§ 1439, 1448, 1457. G. L. §§ 1176, 1185, 1194.

CITATIONS.

When costs in garnishment proceedings are chargeable in the original action and when chargeable as in a separate and distinct action.—*Nylan v. Renhard*, 10 A. 47, 49 P. 266.

Limit of the fee for executing writ of restitution; removal of houses in executing writ is no part of the official duties of a constable.—*Colo. M. & I. Co. v. Messemmer*, 12 A. 362, 55 P. 611.

2541. Fees of jurors.

SEC. 23. Jurors shall receive for attending before any court of record, court commissioners or referee, the following fees, to-wit: In counties of the first class, one dollar and fifty cents per day; second class, two dollars per day; third class, two dollars and fifty cents per day; fourth class, two dollars and fifty cents per day; fifth class, two dollars and fifty cents per day. For attending before a justice of the peace or police magistrate, in counties of the first class, fifty cents per day; second class, one dollar and twenty-five cents per day; third class, one dollar and fifty cents per day; fourth class, one dollar and seventy-five cents per day; fifth class, two dollars per day. For attending inquest over dead body before coroner, the same fees as above provided for attending before courts of record, to be paid out of the county treasury.

Legislation. Sec. 2541. Act 1891 p. 214 § 10, cited under § 2521.

The text took the place of Act 1885 p. 209 § 2, which amended G. S. § 1420. G. L. § 1165.

Clerk furnishes certificate to juror. § 3703.

CITATIONS.

This section fixes the compensation to coroners and all jurors by the day.—*Ireland v. Arapahoe County*, 6 C. 281, 284, 285.

2542. Fees of witnesses.

SEC. 24. Witnesses shall receive for attending in any court of record, court commissioner or referee, the following fees, to-wit: In counties of the first class, one dollar and fifty cents per day; second class, two dollars per day; third class, two dollars per day; fourth class, two dollars and fifty cents per day; fifth class, two dollars and fifty cents per day. For attending before a justice of the peace, or police magistrate the following fees, to-wit: In counties of the first class, fifty cents per day; second class, seventy-five cents per day; third class, one dollar per day; fourth class, two dollars per day; fifth class, two dollars per day. For attending inquest over dead body before coroner, the same fees as above provided for witnesses attending before justice of the peace and police magistrate, provided to be paid out of the county treasury.

[Witness fees may be claimed within a year. Section 1405. See also section 2543.]

Legislation. Sec. 2542. Act 1891 p. 215 § 11, cited under § 2521, which superseded Act 1885 p. 209 § 3, which amended G. S. § 1421. G. L. § 1164.

CITATIONS.

Witnesses attending a coroner's inquest are paid by the day.
—*Ireland v. Arapahoe County*, 6 C. 286.

2543. Mileage fees of jurors and witnesses.

SEC. 25. All jurors and witnesses shall receive the following mileage fees, in counties of every class, to-wit: For each mile actually and necessarily traveled in going from his place of residence to place named in subpoena, fifteen cents per mile; *Provided*, That no officer of the courts, in which the cause is pending and on which he is in actual attendance in his official capacity, including clerks, sheriffs, bailiffs, jurors, police officers and constables, shall be entitled to witnesses' fees or mileage as a witness in any criminal case; *And provided, further*, That no witness before a coroner, justice of the peace, commissioner or referee, shall be allowed fees unless such witness shall claim the same under oath before the adjournment of the court, and no witness in any court of record shall be allowed fees unless such witness shall claim the same under oath before the adjournment of the court for the

term, then only for the number of days such witness shall have actually attended such court in the capacity of such witness; *And provided, further,* That no witness testifying in more than one criminal case on the same day shall be entitled to receive fees as such witness for more than one day by reason thereof, nor more than one day's attendance on any day, though attending in several cases.

[Does this section supersede section 1406?]

Legislation. Sec. 2543. Act 1891 p. 215 § 12.

The mileage which is separately covered by the text was included in the per diem sections noted under § 2542.

See notes to §§ 1405, 1406. We do not consider that the text supersedes § 1406.

2544. Fees of referee.

SEC. 26. Masters in chancery, court commissioners and referees shall be entitled to the following fees; For making sale of real estate in pursuance of the order or decree of a court, making certificate of such sale and deed thereon, the same fees as allowed to sheriffs for making sale of real estate for an execution in the county where such master resides; for taking testimony in any case upon an order of reference, the same fees as are allowed justices of the peace for taking depositions; for report on any such case, three dollars; for hearing such application for a writ of injunction or other writ, and deciding the same, five dollars; for attendance to take depositions at request of any party, whether depositions are taken or not, per day, two dollars.

Legislation. Sec. 2544. G. L. § 1169. G. S. § 1424.

2545. Officers post table of fees in offices.

SEC. 27. All officers of this state, who are required to collect fees for their services are hereby required to make their tables of their respective fees, and keep the same posted in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said office; and if any such officer shall neglect to keep a table of fees posted in his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees posted in his office, forfeit and pay the sum of five

dollars, to be recovered by action at law before any justice of the peace for the use of the county in which the offense shall have been committed.

Legislation. Sec. 2545. Act 1891 p. 220 § 15, cited under § 2521.

2546. Fee bill.

SEC. 28. Any person liable for any costs or fees shall be entitled to receive on demand a certified bill of the same in which the items of service and the charges therefor shall be specifically stated.

Legislation. Sec. 2546. Act 1891 p. 220 § 16, cited under § 2521. This and the preceding section are new in the 1891 Act.

2547. Officials render fee bill.

SEC. 29. Every justice of the peace, clerk, sheriff, constable and other officer who is or may be, under the statutes of this state, authorized to charge and receive fees for the rendering or doing, in his official capacity, any service or act, shall, upon the demand, verbal or written, of any person liable to pay such fees, give to such person, without any charge therefor, a full and correct bill of all such fees, due or claimed to be due, from him, specifying therein each item of such service rendered, and the amount charged therefor, and, after such demand, the officer to whom such fee is due shall not be allowed to collect the same, or any part thereof, until a full and correct bill thereof, as herein provided, shall have been made out and tendered to the party charged therewith, or his agent or attorney; and in such itemized bill no greater fee shall be charged or stated than shall be allowed and provided for by statute for the service so rendered or act done.

Legislation. Sec. 2547. Act 1885 p. 207¹ § 1, amending G. S. § 1458. G. L. § 1198.

The section amended was one providing a penalty for charging excessive fees wholly different from the scope of the present text.

2548. Officers must state amount of fee if required.

SEC. 30. Whenever any justice of the peace, clerk, sheriff, constable, or other officer, mentioned or referred to in the preceding section, shall be required by any person, in good faith, to

do any official act, or perform any official duty for which he is entitled to demand and receive a fee established by law, he shall, if required to do so, state to such person the amount which he is allowed by law to charge and receive therefor, and if, upon a tender to him of such amount, such officer shall wilfully neglect or refuse to perform such act or duty, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, he shall be punished by a fine of not less than ten dollars, nor more than two hundred dollars.

Legislation. Sec. 2548. Act 1885 p. 208. An additional section added to the chapter after amending G. S. § 1453 as per note to § 2547.

2549. Penalty for charging excess fees.

SEC. 31. If any officer whomsoever whose fees are hereinbefore expressed and limited for any service shall take greater fees than are so hereinbefore limited and expressed for any service to be done by him in his office or if any such officer shall charge or demand and take any of the fees hereinbefore ascertained and limited where the business for such fees are chargeable, shall not be actually done and performed, such officer shall forfeit and pay to the party injured fifty dollars, to be recovered as debts of the same amount are recoverable by law.

[See also section 1749.]

Legislation. Sec. 2549. Act 1891 p. 220 § 17, cited under § 2521.

CITATIONS.

This section is penal: taking commissions and fees to which an officer is not entitled is not covered by its terms.—*Mitchell v. Wheeler*, 20 A. 160, 164, 77 P. 361.

2550. Officers shall collect fees in advance.

SEC. 32. Every officer named herein shall collect every fee, as prescribed in this act, for services performed by him in advance, if the same can be ascertained, and when any officer shall negligently or wilfully fail to collect any such fee, the same shall be charged to him on account of his salary.

Legislation. Sec. 2550. § 23 of Act of 1891, cited under § 2529.

CITATIONS.

A complaint against a county judge for surplus fees uncollected should allege that his failure to collect was negligent or wilful.—*Frost v. Teller County*, 43 C. 46, 95 P. 290.

This section does not authorize a judge to require a deposit for costs in condemnation proceedings.—*Teller v. Sievers*, 20 A. 112, 77 P. 262.

2551. Officers keep account of fees and expenditures.

SEC. 33. The several officers herein named shall, from the time of the passage of this act, each of them, in a book provided for that purpose, keep a full, true, accurate and minute account of all fees and emoluments of his office, designating in corresponding columns the amount of all fees and emoluments earned, and all payments received on account thereof; and shall also keep an account of all expenditures made by him on account of clerk hire and other necessary expenses. Such accounts shall always be open to the inspection and examination of the board of county commissioners.

Legislation. Sec. 2551. Act 1891 § 19, cited under § 2529.

CITATIONS.

This section cited as referring more particularly to the subject of fees than salaries.—*Airy v. Peo.*, 21 C. 146, 40 P. 362.

The duties imposed by this and sects. 2552 and 2553 are purely ministerial: a publication reflecting upon the manner in which a county judge performs such duties is not a basis for contempt proceedings.—*Hamma v. Peo.*, 42 C. 410, 94 P. 328.

A complaint against a county judge for excess fees should state the proportion collected and not paid into the treasury.—*Frost v. Teller County*, 43 C. 46, 95 P. 290.

Neither this nor sect. 2552 authorizes the employment of a clerk for a justice of the peace.—*Arapahoe County v. Clapp*, 9 A. 163, 48 P. 158.

2552. Monthly report of officers.

SEC. 34. The county judge, clerk of county court, county treasurer, sheriff, county clerk, justice of the peace, and constables shall, on the first Monday of each month during his term of office, and while receiving a salary, as herein provided, make

to the chairman of the board of county commissioners, a report in writing under oath, of all the fees, commissions and emoluments of his office, of every name and description whatsoever, and of all necessary expenses of clerk hire and other expenses, for the month ending at the time of said report. Such report shall state fully, the manner in which such fees and emoluments accrued.

Legislation. Sec. 2552. Act 1891 § 20, cited under § 2529.

CITATIONS.

No penalty is provided for a violation of this section.—*Airy v. Peo.*, 21 C. 146, 157, 40 P. 362.

The duties imposed by this and sects. 2551 and 2553 are purely ministerial: a publication reflecting upon the manner in which a county judge performs such duties is not a basis for contempt proceedings.—*Hamma v. Peo.*, 42 C. 410, 94 P. 328.

Neither this nor sec. 2551 authorizes the employment of a clerk for a justice of the peace.—*Arapahoe County v. Clapp*, 9 A. 163, 48 P. 158.

2553. Commissioners audit accounts.

Sec. 35. It shall be the duty of said board of county commissioners to audit such accounts as soon as may be, and correct and adjust the same in accordance with the facts.

Legislation. Sec. 2553. Act 1891 § 21, cited under § 2529.

CITATIONS.

This section cited in considering the salary act.—*Airy v. Peo.*, 21 C. 146, 40 P. 362.

The duties imposed by this and sections 2551 and 2552 are purely ministerial: a publication reflecting on the manner in which a county judge performs such duties is not a basis for contempt proceedings.—*Hamma v. Peo.*, 42 C. 410, 94 P. 328.

2554. Fees collected paid to treasurer—Fee funds.

Sec. 36. All fees collected by county officers shall be paid over to the county treasurer, and shall be kept by him in separate funds to be known as:

The "County judge's and clerk of county court fee fund,"

The "sheriff's fee fund,"

And the "County clerk's fee fund,"

The "County treasurer's commission and fee fund,"

The "Justice of the peace fee fund," (giving name of justice).

The "Constable's fee fund," (giving name of constable),

And all salaries or compensation of county judges, clerks of county courts, sheriffs and county clerks, and their deputy or assistant clerks, and deputy sheriffs, county treasurer and employes under them, the justice of the peace and constables, shall be paid out of said funds and no others. Any balance left to the credit of said funds, in any year, after all the salaries and compensation provided for in this section shall have been paid to the end of such year, shall be placed to the credit of the general county fund.

Legislation. Sec. 2554. Act 1891 § 22, cited under § 2529.

CITATIONS.

This section contravenes sec. 15 art. XIV of the constitution and county officers are not obliged to pay to the treasurer any of the fees collected until after the amount of such fees equals the amount of salary.—*Airy v. Peo.*, 21 C. 146, 156, 40 P. 362. *Blanchard v. Chaffee County*, 15 A. 412, 62 P. 580.

This section cited in an action against a county judge to recover surplus uncollected fees.—*Frost v. Teller County*, 43 C. 46, 95 P. 290.

This section cited in holding that no compensation is provided for the sheriff for his services as jail keeper.—*Larimer County v. Bransom*, 4 A. 279, 35 P. 752.

The salary of each officer is to be paid out of his own fund and no other.—*Henderson v. Pueblo County*, 4 A. 302, 35 P. 880. *Bransom v. Larimer County*, 5 A. 234, 37 P. 957.

This section being held unconstitutional a sheriff's fee fund has no legal existence and a warrant drawn against it is void.—*Blanchard v. Chaffee County*, 15 A. 412, 62 P. 580.

2555. Penalty for refusing to pay fees to treasurer.

SEC. 37. Any officer, hereinbefore named, failing or refusing to pay over to the county treasurer the fees of his office, as provided in this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined a sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding

one year, or both such fine and imprisonment, and may be removed from office by the court before which the conviction is had.

Legislation. Sec. 2555. Act 1891 § 24, cited under § 2529.

CITATIONS.

County officers are not obliged to pay over fees collected until the amount equals the amount of salary.—*Airy v. Peo.*, 21 C. 146, 156, 40 P. 362.

This section does not apply to jury and witness fees which the clerk collects.—*Adams v. Peo.*, 25 C. 540, 55 P. 809.

2556. Office hours.

SEC. 38. All county officers, except the county superintendent of schools, county assessor and county surveyor shall be kept open at least eight hours every working day: *Providing, however*, That clerks of court and sheriffs shall be subject at all times to the command of the people, and each thereof shall at all hours night or day, be prepared to attend to such duties as may reasonably be required of them.

[For fees of registrar of titles see section 812.]

[Fees of public trustee. Section 6863.]

[Fees of appraisers of estate. Section 7248.]

Legislation. Sec. 2556. Act 1891 § 18, cited under § 2529.

II. SALARIES OF STATE, COUNTY AND PRECINCT OFFICERS.

Section.

- 2557. Governor, lieutenant-governor, secretary, treasurer, auditor, superintendent of public instruction, attorney general supreme judges, district judges, district attorney.
- 2558. Secretary of state—Auditor—Compensation.
- 2559. Deputy secretary of state—Salary.
- 2560. Deputy auditor—Salary.
- 2561. State treasurer—Compensation.
- 2562. Deputy treasurer—Clerks—Compensation.
- 2563. Attorney general—Compensation.
- 2564. Salaries when and how paid.
- 2565. Classification of counties to regulate salaries.
- 2566. Boulder county of second class.
- 2567. Las Animas county of second class.
- 2567-A. Pitkin county of fourth class.

II. SALARIES OF STATE, COUNTY AND PRECINCT OFFICERS.*Continued.***Section.**

- 2568. Clerks of district court—Compensation.
 - 2569. Salary of county judges paid from fees by classes.
 - 2570. County treasurer—Compensation.
 - 2571. Sheriff—Compensation.
 - 2572. Custodian—Compensation.
 - 2573. County clerks—Compensation.
 - 2574. County assessors—Compensation.
 - 2575. County superintendent of schools—Compensation.
 - 2575-A. Crowley county—Superintendent's compensation.
 - 2576. County commissioners—Compensation.
 - 2577. Coroners—Compensation.
 - 2578. Justice of the peace—Compensation.
 - 2579. Constables—Compensation.
 - 2580. Deputies and assistants—Compensation.
 - 2581. District attorneys—Compensation—Statement of fees.
 - 2582. Classification of counties—Fees of district attorneys in third class districts.
 - 2583. Fees of district attorneys in first and second class districts.
 - 2584. Deputy district attorneys—Compensation.
 - 2585. Delinquent children—When fees allowed district attorney.
 - 2586. Same—Fees.
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- 2557. Governor, lieutenant-governor, secretary, treasurer, auditor, superintendent of public instruction attorney general, supreme and district judges and district attorney—Compensation.**

SEC. 39. The governor shall receive an annual salary of five thousand dollars, and the further sum of fifteen hundred dollars for the payment of a private secretary. The lieutenant-governor shall receive an annual salary of one thousand dollars. The secretary of state shall receive an annual salary of three thousand dollars, and the further sum of four thousand dollars for the payment of clerks. The auditor of state shall receive an annual salary of twenty-five hundred dollars. The state treasurer shall receive an annual salary of three thousand dollars. The superintendent of public instruction shall receive an annual salary of three thousand dollars. The attorney-general shall receive an

annual salary of two thousand dollars. The judges of the supreme court shall each receive an annual salary of five thousand dollars. The judges of the district court shall each receive an annual salary of four thousand dollars. The district attorneys shall each receive an annual salary of eight hundred dollars and all fees.

[For salary of governor, judges of supreme court and judges of district court, see Constitution, art. 5, section 30. There is pending a proposed amendment to this section of the constitution, but not yet voted upon. L. '07, p. 299, section 2.]

[For salary of secretary of state and auditor, see section 2558.]

[For salary of attorney general, see section 2563.]

[For salary of district attorney, see section 2581.]

[For salary of treasurer, see section 2561.]

Legislation. Sec. 2557. G. L. § 2419, amended by Act 1883 p. 191 § 1. G. S. § 2392.

2558. Secretary of state—Auditor—Compensation.

SEC. 40. That the secretary of state and the auditor of the state of Colorado shall respectively receive as compensation for their services the annual salary of four thousand (4,000) dollars to be paid monthly from the general fund, as the salaries of other state officers are paid.

Legislation. Sec. 2558. Act 1907 p. 400 § 1, entitled:

AN ACT

In Relation to the Salaries of the Secretary of State and Auditor of State.

The salaries of these officers before this Act were fixed by § 2557.

2559. Deputy secretary of state—Salary.

SEC. 41. That the secretary of state be and is hereby authorized to appoint a deputy whose salary shall be twenty-five hundred (2,500) dollars per annum, to be paid monthly as other state officers' salaries are paid, from the general fund.

Legislation. Sec. 2559. Act 1891 p. 194 § 1, entitled:

AN ACT

Authorizing the Secretary of State and Auditor of State to Appoint Deputies and Fixing the Salaries of Said Deputies and to Repeal All Acts and Parts of Acts in Conflict With This Act.

2560. Deputy auditor—Salary.

SEC. 42. That the auditor of state be and is hereby authorized to appoint a deputy whose salary shall be twenty-five hundred (2,500) dollars per annum, to be paid monthly as other state officers' salary are paid, from the general fund.

Legislation. Sec. 2560. Act 1891 § 2, cited under § 2559.

2561. State treasurer—Compensation.

SEC. 43. The state treasurer shall receive a salary of six thousand dollars per annum, to be paid from the appropriation made for the payment of the salaries of the executive department.

[For salary of division engineer see section 3342.]

[Salary of public trustee. Section 6863.]

Legislation. Sec. 2561. Act 1891 p. 197 § 4, entitled:

AN ACT

In Relation to the State Treasurer.

The text controls § 2557 as to salary of treasurer.

CITATIONS.

The supreme court declined to answer inquiry as to whether or not the then treasurer was entitled to the increase in salary provided by this section.—*House Resolution, In re*, 15 C. 602, 26 P. 145.

This section was ineffective to change the salary of the treasurer from the sum at which it was fixed at the time of his election.—*Carlile v. Henderson*, 17 C. 533, 31 P. 117.

2562. Deputy treasurer—Clerks—Compensation.

SEC. 44. That the state treasurer be, and he is hereby, authorized to appoint a deputy whose salary shall be twenty-five hundred dollars per annum, and such clerks as he may deem necessary, whose total salaries shall not exceed fifteen hundred dollars per annum, said salaries to be paid from the appropriation made for the payment of the salaries of the officers of the executive department.

Legislation. Sec. 2562. Act 1891 § 3, cited under § 2561. Sec. 5 of the Act repealed G. S. § 1352 on the same matter.

2563. Attorney general—Compensation.

SEC. 45. That the attorney general shall receive as compensation for his services an annual salary of five thousand (5,000) dollars, to be paid from the general fund monthly, as the salaries of other state officers are paid; and he is hereby authorized to appoint a deputy, who shall have authority to act for the attorney general in all matters except in respect to such duties as devolve upon the attorney general by virtue of the constitution.

Legislation. Sec. 2563. Act 1905 p. 156 § 1, entitled:

AN ACT

Concerning the Attorney General of the State of Colorado.

Under Act 1891 p. 194 § 1, his salary had been \$3000 per annum.

2564. Salaries, when and how paid.

SEC. 46. The salaries aforesaid shall be payable in monthly installments at the end of each and every month from the date of the qualification of the said officers respectively, for their respective offices, and upon request the auditor shall draw warrants upon the state treasurer accordingly in favor of the several officers aforesaid.

Legislation. Sec. 2564. G. L. § 2420. G. S. § 2994.

CITATIONS.

As to who are public officers whose salaries are payable out of the public funds without further legislative sanction for such payment.—*Peo. v. Goodykoontz*, 22 C. 509, 45 P. 415.

2565. Classification of counties to regulate salaries.

SEC. 47. For the purpose of providing for and regulating the salaries of county and other officers, the several counties of this state shall be classified with reference to population and divided into five classes as follows:

The city and county of Denver, unless otherwise provided in the charter thereof, shall be first class; El Paso, Teller and Pueblo counties shall be second class; Boulder, Fremont, Lake, Pitkin, Las Animas and Weld counties shall be third class; Adams, Arapahoe, Chaffee, Clear Creek, Conejos, Costilla, Delta, Douglas,

Eagle, Garfield, Gilpin, Gunnison, Huerfano, Larimer, La Plata, Logan, Mesa, Montrose, Morgan, Ouray, Otero, Park, Prowers, Jefferson, Rio Grande, [Routt.] Saguache, San Miguel, and San Juan counties shall be fourth class; Archuleta, Baca, Bent, Cheyenne, Custer, Dolores, Elbert, Grand, Hinsdale, Kiowa, Kit Carson, Lincoln, Montezuma, Mineral, Phillips, Rio Blanco, Sedgwick, Summit, Washington and Yuma counties shall be fifth class. The counties of the fourth class shall be divided into two divisions known as "A" and "B."

The counties comprising division "A" shall be Adams, Arapahoe, Chaffee, Clear Creek, Conejos, Douglas, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Larimer, La Plata, Mesa, Otero, Ouray and San Miguel; and the counties comprising division "B" shall be Costilla, Delta, Routt, Eagle, Logan, Montrose, Morgan, Park, Prowers, Rio Grande, Saguache and San Juan.

Legislation. Sec. 2565. Act 1905 p. 174 § 1, entitled:

AN ACT

For the Classification of Counties for the Purpose of Providing for and Regulating the Salaries of County and Other Officers, and to Repeal All Previous Acts in Relation Thereto.

The text is a substitute for Act 1903 p. 413 § 1, although the 1903 Act is not mentioned in the text nor in the title. The 1903 Act was a substitute for Act 1901 p. 181 § 1, which amended Act 1899 p. 331 § 1, which amended Act 1891 p. 307 § 1.

The text is cited in § 5977A. in its classification of counties for high school district purposes.

Classification of counties for fees. § 2521.

Classification to fix compensation of county school superintendents. § 2575.

CITATIONS.

The title to the salary act of 1891 was not obnoxious to sec. 21 art 5 of the constitution, as to more than one subject.—*Airy v. Peo.*, 21 C. 145, 149, 40 P. 362.

The salary act of 1891 did not repeal sec. 1692 providing a penalty for the embezzlement of public funds.—*Adams v. Peo.* 25 C. 539, 55 P. 809.

The acts of 1891 and 1899 referred to in an action by a county treasurer to recover fees paid into the treasury: constitutionality of act of 1899 raised but not decided.—*Gregg v. Lake County*, 32 C. 360, 76 P. 377.

In an action by the clerk of the district court to recover

CITATIONS CONTINUED.

moneys paid into the treasury, held, the passage of the act of 1889 was in compliance with the constitution.—*Pueblo County v. Strait*, 36 C. 139, 85 F. 178.

Part of the salary act of 1891 as to salary of district attorneys, held obnoxious to sec. 21, art. V constitution; the subjects "salary" and "fees" are not directly germane.—*Teller County v. Trowbridge*, 42 C. 452, 457, 96 P. 555.

The salary act of 1891 referred to as to sheriffs' fees.—*Bransom v. Larimer County*, 5 A. 234, 37 P. 958. As to salary of clerk for a justice of the peace.—*Arapahoe County v. Clapp*, 9 A. 162, 48 P. 158.

2566. Boulder county of second class.

SEC. 48. That for the purpose of fixing the compensation of the county commissioners and other officers therein, the county of Boulder shall belong to and be known as a county of the second class.

Legislation. Sec. 2566. Act 1907 p. 315 § 1, amending § 2565 as to this county.

2567. Las Animas county of second class.

SEC. 49. That for the purpose of fixing the compensation of the county commissioners and other officers therein, the county of Las Animas shall belong to, and be known as, a county of the second class. All acts and parts of acts inconsistent with this act are hereby repealed.

Legislation. Sec. 2567. Act 1907 p. 318 § 1, amending § 2565 as to this county.

2567-A. Pitkin County of fourth class.

SEC. 49a. That, for the purpose of fixing the compensation of the county commissioners and all other officers of the county of Pitkin, the said county of Pitkin shall hereafter belong to, and be known as a county of the Fourth Class B.

Approved, May 5th, 1909.

Legislation. Sec. 2567-A. Act 1909 p. 454 § 1, entitled:

AN ACT

To Fix the Classification of Pitkin County Concerning the Salaries to be Paid to the County Commissioners of Said County, and Other Officers of Said County.

2568. Clerks of district courts—Compensation.

SEC. 50. Clerks of district courts shall be paid the following named salaries out of the fees of their respective offices, and not otherwise, to-wit:

In counties of the first class the sum of **thirty-six hundred** (3,600) dollars per annum, to be paid quarterly; in counties of the second class, the sum of two thousand (2,000) dollars per annum, to be paid quarterly; in counties of the third class, the sum of eighteen hundred (1,800) dollars per annum, to be paid quarterly; in counties of the fourth class, the sum of fifteen hundred (1,500) dollars per annum, to be paid quarterly; in counties of the fifth class, the sum of one thousand (1,000) dollars per annum, to be paid quarterly.

Legislation. Sec. 2568. Act 1907 p. 562 § 7, amending Act 1899 p. 333 § 7, which amended Act 1891 p. 310 § 7.

2569. Salary of county judges paid from fees by classes.

SEC. 51. The county judges of the several counties of this state shall receive as their only compensation for their services an annual salary to be paid quarterly out of the fees and emoluments of their respective offices and out of the fees of the office of the clerk of the county court actually collected, and not otherwise, including the amount to be paid by the county, to wit: In counties of the first class, the sum of **forty-six hundred dollars** (\$4,600); in counties of the second class, the sum of **three thousand dollars** (\$3,000), and **twelve hundred dollars** (\$1,200) for clerk hire; in counties of the third class, the sum of **three thousand** (\$3,000); in division "A" of counties of the **fourth class**, the sum of **two thousand one hundred dollars** (\$2,100); in division "B" of counties of the fourth class, the sum of **twelve hundred dollars** (\$1,200); in counties of the fifth class the sum of **one thousand dollars** (\$1,000). In counties of the first class the county judge shall be allowed a further sum of **three thousand dol-**

lars (\$3,000) per annum for his chief clerk, who shall be the clerk of the county court, and he may also employ such additional clerical assistance as the duties of the clerk of the county court require, the compensation of such assistants to be by him fixed and to be paid out of the fees and emoluments of the county judge and clerk of the county court. In counties of all other classes the compensation of the clerk of the county court shall be a charge upon the county judge and shall be paid out of the salary herein allowed him, and not otherwise."

Legislation. Sec. 2569. Act 1909 p. 487 § 9, a substitute for R. S. § 2649, Act of 1899 p. 333 § 5, which amended Act 1891 p. 310 § 9.

CITATIONS.

The constitution, sec. 15, art. XIV, does not permit salaries to be paid to county judges except from fees collected.—*Compensation of County Judges, In re*, 18 C. 273, 32 P. 549.

2570. County treasurer—Compensation.

SEC. 52. The county treasurers of the several counties of this state shall receive as their only compensation for their services an annual salary, to be paid quarterly out of the fees, commissions and emoluments of their respective offices and not otherwise, to-wit: In counties of the first class, the sum of forty-six hundred (4,600) dollars. In counties of the second class, the sum of three thousand (3,000) dollars. In counties of the third class, the sum of two thousand five hundred (2,500) dollars. In division "A" of counties of the fourth class, the sum of two thousand one hundred (2,100) dollars. In division "B" of counties of the fourth class, the sum of seventeen hundred (1,700) dollars. In counties of the fifth class, the sum of fifteen hundred (1,500) dollars.

Legislation. Sec. 2570. Act 1899 p. 334 § 10, amending Act 1891 p. 311 § 10, cited under § 2529. See § 2537.

CITATIONS.

Constitutionality of act of 1899 raised but not determined. Failure to present claim for back fees, to commissioners.—*Gregg v. Lake County*, 32 C. 360, 76 P. 377.

Interest received by the treasurer from deposit of county funds can not be credited to his fee fund.—*Arapahoe County v. Hall*, 9 A. 540, 545, 49 P. 371.

2571. Sheriff—Compensation.

SEC. 53. The sheriffs in the several counties of this state shall receive as their only compensation for their services rendered, an annual salary to be paid quarterly out of the fees, commissions and emoluments of their respective offices and not otherwise, to-wit: In counties of the first class, the sum of forty-six hundred (4,600) dollars. In counties of the second class, the sum of three thousand (3,000) dollars. In counties of the third class, the sum of twenty-eight hundred (2,800) dollars. In division "A" of counties of the fourth class, the sum of twenty-three hundred (2,300) dollars. In division "B" of counties of the fourth class, the sum of seventeen hundred (1,700) dollars. In counties of the fifth class, the sum of fifteen hundred (1,500) dollars. Sheriffs shall be allowed actual traveling expenses, payable out of the county treasury, upon verified, itemized account being presented for the same; in the service of all warrants, capiases, mittimus commitments, body attachments and court orders, requiring same not to exceed ten cents per mile in counties not of the first class: *Provided, however,* That the actual expenses incurred in the service of executions, writs of attachment, replevins, restitutions or other process not hereinbefore mentioned, shall be paid by the party requiring such service. In counties of the first class, the under sheriffs and the deputy sheriffs appointed by the sheriff shall be paid a salary; the under sheriffs the sum of two thousand five hundred (2,500) dollars per annum; and each deputy the sum of fifteen hundred (1,500) dollars per annum, excepting the deputy acting as chief clerk, and chief criminal deputy, who shall each receive the sum of eighteen hundred (1,800) dollars per annum. In counties of the second class the undersheriffs and the deputy sheriffs appointed by the sheriff shall be paid a salary. The under sheriffs the sum of eighteen hundred (1,800) dollars per annum, and each deputy the sum of twelve hundred (1,200) dollars per annum; *Provided, however,* That the bailiffs of county courts, or deputy sheriffs acting in such capacity in counties of the first class, shall receive the same compensation as bailiffs of the district courts, or deputy sheriffs acting in such capacity in counties of the first class. The under sheriff and each and every

deputy shall make to the sheriff a report in writing under oath, of all fees collected of any description whatsoever and all expenditures and necessary expenses pertaining to and relative to the discharge of the duties of his office.

Legislation. Sec. 2571. Act 1907 p. 398 § 7, amending Act 1899 p. 335 § 11, which amended Act 1891 p. 311 § 11, cited under § 2529.

For fees of sheriff see § 2532.

CITATIONS.

Whether the salary is paid depends upon whether the fees collected amount to sufficient therefor. To what fees, mileage and traveling expenses a sheriff is entitled.—*Sargent v. La Plata County*, 21 C. 162, 169, 40 P. 368.

No extra compensation is provided for sheriff's services as keeper of the county jail.—*Larimer County v. Bransom*, 4 A. 278, 35 P. 752.

2572. Custodian—Compensation.

SEC. 54. Whenever it shall be the duty of any sheriff or constable to appoint a custodian to take charge of any property levied upon by virtue of a writ of attachment or execution, the court shall allow such compensation for the service of the custodian as shall be proper, not exceeding two and one-half dollars per day, to be taxed as costs, and such officer shall not demand or receive any greater sum.

[For appointment and fees of custodian see section 2532.]

Legislation. Sec. 2572. Act 1891 p. 323 § 1, cited under § 2533.

CITATIONS.

Prior to this statute the sheriff was entitled to reasonable charges.—*City Bank v. Tucker*, 7 C. 222, 3 P. 217.

An order made on motion to retax costs was construed as an adjudication of the sheriff's bill which included custodian's fees.—*First Nat. Bank v. Follett*, 46 C. 455, 104 P. 955.

Charging the maximum fee was not a violation of sec. 1293 or 1749.—*Bank of Monte Vista v. Brennan*, 7 A. 429, 43 P. 1050.

The compensation for custodian must be allowed and taxed by the court as costs or it cannot be recovered of the losing party.—*Edinger v. Thomas*, 9 A. 152, 47 P. 848. *Blyth v. Pco.*, 16 A. 530, 66 P. 681.

2573. County clerks—Compensation.

SEC. 55. The county clerks in the several counties in this state shall receive as their only compensation for their services an annual compensation to be paid quarterly out of the fees and emoluments of their respective offices, actually collected and not otherwise, to-wit: In counties of the first class, the sum of forty-six hundred (4,600) dollars. In counties of the second class, the sum of twenty-seven hundred and fifty (2,750) dollars. In counties of the third class, the sum of two thousand four hundred (2,400) dollars. In division "A" of counties of the fourth class, the sum of two thousand one hundred (2,100) dollars. In division "B" of counties of the fourth class, the sum of seventeen hundred and fifty (1,750) dollars. In counties of the fifth class, the sum of fifteen hundred (1,500) dollars.

Legislation. Sec. 2573. Act 1899 p. 336 § 12, amending Act 1891 § 12, p. 312 cited under § 2529.

For fees of county clerk see § 2538.

CITATIONS.

The act of 1899 fixing salary was properly passed.—*Pueblo County v. Strait*, 36 C. 139, 85 P. 178.

A clerk may not make a profit out of having the records of a county copied for a new county.—*Denver County v. Lunney*, 46 C. 418, 104 P. 950

The county clerk holds but one office: his fees as clerk of the board and recorder are emoluments of his one office.—*Henderson v. Pueblo County*, 4 A. 302, 35 P. 880.

2574. County assessors—Compensation.

SEC. 56. The county assessors in the several counties of the state shall receive the following compensation to be paid quarterly out of the county treasury, to-wit:

In counties of the first class, an annual salary of forty-six hundred (4,600) dollars; in counties of the second class, an annual salary of twenty-seven hundred and fifty (2,750) dollars; in counties of the third class, an annual salary of twenty-four hundred (2,400) dollars; in counties of the fourth class, division "A," an annual salary of eighteen hundred (1,800) dollars; in counties of the fourth class, division "B," an annual salary of

thirteen hundred (1,300) dollars. In counties of the fifth class, an annual salary of one thousand (1,000) dollars.

[Fees of assessor for producing abstract of assessment. Section 5635.]

415 § 13, which amended Act 1899 p. 336 § 13, which amended Act 1891 p. 312 § 13, cited under § 2529.

CITATIONS.

The act of 1891 repealed, as to counties of the first and second class, so much of sec. 6658 as allowed compensation for work in relation to municipal taxation.—*Walpole v. Pueblo*, 12 A. 156, 54 P. 910.

2575. County superintendents of schools—Compensation.

SEC. 57. For the purpose of regulating the amount of compensation of county superintendents of schools the counties of the state are divided into seven classes as follows:

The city and county of Denver, El Paso and Las Animas counties shall be the first class; Pueblo, Weld, Boulder, Fremont and Teller counties shall be the second class; Conejos, Delta, Garfield, Gilpin, Huerfano, Lake, Larimer, Mesa, Montrose, and Otero counties shall be third class; Chaffee, Clear Creek, Douglas, Eagle, Elbert, Jefferson, Gunnison, La Plata, Ouray, Rio Grande, Pitkin, Park, Prowers and Saguache counties shall be the fourth class; Bent, Custer, Cheyenne, Kit Carson, Logan, Montezuma, Morgan, Routt, San Miguel and Yuma counties shall be the fifth class; Archuleta, Baca, Costilla, Grand, Kiowa, Lincoln, Mineral, Phillips, Rio Blanco, San Juan, Sedgwick, Summit and Washington shall be the sixth class; Dolores and Hinsdale shall be the seventh class. County superintendents of schools shall receive the following compensation, to be paid quarterly out of the county treasury, to-wit: In counties of the first class, an annual salary of twenty-eight hundred (2,800) dollars; in counties of the second class, an annual salary of two thousand (2,000) dollars; in counties of the third class, an annual salary of twelve hundred (1,200) dollars; in counties of the fourth class, an annual salary of eleven hundred (1,100) dollars; in counties of the fifth class, an annual salary of eight hundred (800) dollars; in counties of the sixth class, an annual salary of five hundred (500) dollars; in counties

of the seventh class, an annual salary of one hundred (100) dollars; in all but first and second class counties, boards of county commissioners may allow mileage not to exceed ten (10) cents per mile for distance necessarily and actually traveled in the performance of duty, not to exceed an aggregate of three hundred (300) dollars per annum in any county.

[For Arapahoe county see section 2523.]

Legislation. Sec. 2575. Act 1905 p. 175 § 2, amending Act 1899 p. 334 § 14, which amended Act 1891 p. 312 § 14, cited under § 2529.

CITATIONS.

Under act of 1891 a county was not liable for a deputy superintendent's compensation.—*El Paso County v. Finch*, 8 A. 406, 46 P. 629.

The per diem provided for in the act of 1891, included any fraction of a day.—*Garfield County v. White*, 16 A. 519, 66 P. 683.

2575-A. Crowley County—Superintendent's compensation.

SEC. 57a. For the purpose of fixing the amount of compensation of the county superintendent of schools, said county of Crowley shall be a county of the fifth class.

Legislation. Sec. 2575-A. Sec. 13 of Act of 1911, cited under § 1094-A.

2576. County commissioners—Compensation.

SEC. 58. In counties of every class in the state, the county commissioners shall be allowed five dollars per day for each day necessarily spent in the performance of their duties as commissioners, and ten cents per mile for the distance actually traveled in going to and returning from the place of meeting; *Provided*. That the salaries of the county commissioners shall not, in counties of the third, fourth and fifth classes in any one year, exceed five hundred dollars. The chairman of the board of county commissioners of said counties, shall be, ex officio superintendent of the poor, and shall receive as compensation for such services, five dollars per day for each day spent in the performance of such duties; *Provided*. The sum received by said chairman for his service as superintendent of the poor, shall not exceed, in any one

year, in counties of the first class, one thousand dollars; second class, three hundred and fifty dollars; third class, three hundred dollars; fourth class, two hundred dollars; fifth class, one hundred and fifty dollars; *Provided*. That if the chairman of the board, for the time, be a non-resident of the county seat of said county, any member of such board, upon order of the board, may act as such superintendent, and shall for the time being, receive the compensation allowed therefor; *And provided, further*, That the county commissioners may, in their discretion disallow any charges against the county for fees or costs of district attorneys, or other persons, for the trial or examination of any criminal case, before any justice of the peace, police magistrate, police judge, or any court not being a court of record. They, in counties of the first and second classes, shall not allow any fees for district attorneys, or deputies, or attorney attendance before justices of the peace in misdemeanors.

Legislation. Sec. 2576. Act 1891 § 8, cited under § 2521.

This abrogated Act 1885 p. 219 § 13 and also G. S. § 1454, G. L. § 1196. County commissioners by Act 1861 p. 86 § 14 were allowed \$3 per day and 15 cents mileage. Increased to \$5 by Act 1865 p. 68 § 16 without mileage. Mileage restored by Act 1866 p. 50 § 1.

CITATIONS.

The payment of costs and fees in preliminary examinations and misdemeanor cases is left to the discretion of the commissioners and their action is not subject to review.—*Arapahoe County v. Graham*, 4 C. 201, *Pitkin County v. Sanders*, 27 C. 122, 59 P. 402. *Merwin v. Boulder County*, 29 C. 173, 177, 67 P. 286. *Otero County v. Wood*, 11 A. 21, 52 P. 214. *Yuma County v. Pendleton*, 17 A. 160, 67 P. 911.

The last proviso is not foreign to the title of the act and was not repealed by the act of 1891 p. 223.—*Merwin v. Boulder County*, 29 C. 173, 177, 67 P. 286.

A constable's fees for serving a warrant are within the last proviso, and within sec. 1077.—*Weid County v. Camp*, 48 C. 61, 108 P. 973.

2577. Coroners—Compensation.

SEC. 59. In counties of every class the coroner shall be allowed the sum of five dollars per day, for each day actually employed in making an inquest and ten cents per mile for each

mile actually and necessarily traveled in going to and returning from the place of inquest, to be paid out of the county treasury. For all services performed in the place of sheriff, the coroner shall receive the same fees as are allowed to the sheriff for like services.

Legislation. Sec. 2577. Act 1891 § 9, cited under § 2521.

This abrogated Act 1885 p. 217 § 10 and also G. S. § 1455; G. L. § 1197.

CITATIONS.

This section cited in construing the per diem of coroner's jurors.—*Ireland v. Arapahoe County*, 6 C. 284, 285.

2578. Justices of the peace—Compensation.

SEC. 60. Justices of the peace shall receive the following compensation to be paid quarterly out of the fees of their respective offices, to-wit: In city precincts in counties of the first class, the sum of three thousand dollars per annum. In city precincts in counties of the second class, the sum of fifteen hundred dollars per annum. In the city precincts of the counties of the first and second classes, the justices of the peace shall be entitled to such reasonable sum for rent and stationery supplies, as may be allowed by the board of county commissioners of the respective counties.

Legislation. Sec. 2578. Act 1891 § 15, cited under § 2529.

2579. Constables—Compensation.

SEC. 61. Constables in city precincts in counties of the first class, shall receive the sum of eighteen hundred dollars per annum, to be paid quarterly out of the fees of their respective offices and not otherwise. Constables in city precincts in counties of the second class, shall receive the sum of twelve hundred dollars to be paid quarterly out of the fees of their respective offices and not otherwise.

Legislation. Sec. 2579. Act 1891 p. 313 § 16, cited under § 2529.

2580. Deputies and assistants—Compensation.

SEC. 62. Deputies and assistants may be employed by the sheriffs, county clerks, county treasurers, county assessors and

county superintendents of schools, under the direction of the board of county commissioners for said counties respectively, and clerks of the district court under direction of the judge of such court, and shall be paid salaries out of the fees, commissions and emoluments of the office wherein employed (except employes of county assessor and of county superintendent, who shall be paid out of the county treasury), the compensation and time of service to be fixed by the board, the selection of said deputies and employes to be made by the officer authorized to employ them; *Provided*, That the provisions of this section relating to the county superintendents of schools shall apply only in counties of the first class.

Legislation. Sec. 2580. Act 1899 p. 337 § 17, amending Act 1891 p. 313 § 17, cited under § 2529.

CITATIONS.

This section cited in holding that a sheriff is not entitled to compensation for a deputy as jailer.—*Larimer County v. Branson*, 4 A. 278, 35 P. 752.

This section cited in holding that "emoluments" does not include interest on funds deposited.—*Arapahoe County v. Hall*, 9 A. 540, 49 P. 371.

2581. District attorney—Compensation—Statement of fees.

SEC. 63. The annual compensation of the district attorneys of the several judicial districts of this state, including salaries paid by the state, is hereby limited and regulated as follows: In every judicial district presided over by more than one district judge, in districts composed of counties of the first class, the district attorney shall receive in full compensation for his services, not to exceed the sum of four thousand six hundred (4,600) dollars; and in all other judicial districts whether presided over by one or more judges the district attorney shall receive in full compensation for his services, not to exceed the sum of three thousand (3,000) dollars. Each district attorney shall, at the end of each year of his term of office, render a true and correct itemized statement, under oath, to the secretary of state, which statement shall be filed and preserved in the latter's office, of the fees received by him as district attorney for the preceding year and the surplus received by him, if any, over and above the annual sum herein limited, shall

be repaid to the county treasurers of the several counties of his district, each such county to be repaid such proportionate sum of such surplus as the amount each has paid him during such year shall bear to the whole fees collected in the district by him.

[Salaries of assistant see section 2100.]

[For expenses of district attorney see section 2107.]

Legislation. Sec. 2581. Act 1899 p. 332 § 2, amending Act 1891 p. 308, cited under § 2529.

The text supersedes § 2557 as to district attorneys salary. Before 1891 this officer received a salary of \$800 under G. S. § 2993, Act 1883 p. 190 § 1, and his fees under G. S. § 1418, G. L. § 1163. He now receives the statutory fees but must account for them under the text.

The R. S. sections 7 and 8 p. 263 as to his fees and salary were omitted in the G. L. and G. S.

Compensation to district attorney in preliminary examinations and misdemeanor cases. § 2576.

CITATIONS.

The fifth paragraph of the act of 1891 p. 223, was obnoxious to the constitution and did not repeal sec. 2 of the act of 1891 p. 308.—*Teller County v. Trowbridge*, 42 C. 457, 95 P. 556.

This section cited in an action for commissions under sec. 2582.—*McMullin v. Montrose County*, 18 A. 120, 70 P. 450.

2582. Classification of counties—Fees of district attorneys in third class districts.

SEC. 64. *First*—That for the purpose of regulating the compensation of district attorney in this state, the judicial districts of the state are hereby divided into classes, as follows, viz: The second judicial district shall constitute the first class; the fourth and tenth judicial districts shall constitute the second class; the remaining judicial districts in this state shall constitute the third class.

* * * * *

Fourth—The fees of district attorneys, in districts of the third class, shall be as follows: In all civil cases a docket fee of five dollars; for all collections for the state, or any county in his district, when the amount collected is under five hundred dollars, five per cent.; over five hundred dollars two and one-half per cent.; for every criminal trial, conviction or examination, before a justice of the peace or judge of any court of record when said

judge is sitting in the capacity of an examining magistrate, five dollars; in cases where more than one day is consumed in such trial, or conviction, or examination, by change of venue or otherwise, per day, five dollars; for the trial or conviction of each defendant, in cases of misdemeanor, in any court of competent jurisdiction, five dollars; for the trial or conviction, in any court of any competent jurisdiction, of each defendant, in cases of any court of competent jurisdiction, five dollars. For the trial felonies, fifteen dollars; for the trial or conviction of each defendant in capital cases, one hundred dollars; for each day's attendance at coroners' inquests and hearings on habeas corpus, ten dollars; for drawing each indictment or information, five dollars; *Provided*, No fee shall be allowed for drawing any indictment or information which may be quashed.

[The second and third subdivisions of this section were superseded by section 2583, and the fifth and sixth subdivisions by sections 2581 and 2584.]

Legislation. Sec. 2582. Act 1891 p. 221 § 1, amending Act 1889 p. 162 § 1, which amended G. S. § 1418. G. L. § 1163.

CITATIONS.

No fee for drawing bills ignored by the grand jury; fees where there were several indictments against two jointly; also where two were jointly indicted, tried and convicted.—*Arapahoe County v. Graham*, 4 C. 203.

This section referred to in an action by a deputy for fees.—*Mervin v. Boulder County*, 29 C. 176, 67 P. 287.

Paragraph 5 of the act of 1891 was obnoxious to the constitution.—*Teller County v. Trowbridge*, 42 C. 457, 95 P. 556.

Commissions to district attorney under this section not allowed for merely entering appearance in a suit brought and compromised by the county attorney.—*McMullin v. Montrose County*, 18 A. 119, 70 P. 450.

2583. Fees of district attorneys in first and second class districts.

SEC. 65. The fees of district attorneys in districts of the first and second class shall be as follows:

In all civil cases a docket fee of five dollars. For all collections for the state, or any county in his district, when the amount collected is under five hundred dollars, five per cent.; over five

hundred dollars, two and one-half per cent.; for every criminal trial, conviction or examination, in cases where a felony is charged, before a justice of the peace, or judge of any court of record when said judge is sitting in the capacity of an examining magistrate, five dollars. In cases where more than one day is consumed in such trial, conviction or examination, in cases where a felony is charged, by change of venue or otherwise, per day, five dollars. For the conviction of each defendant, in cases of misdemeanor, in or conviction in any court of competent jurisdiction of each defendant, in cases of felonies, fifteen dollars. For the trial or conviction of each defendant in capital cases, one hundred dollars. For each day's attendance at coroner's inquests and hearings on habeas corpus, ten dollars. For drawing each indictment or information, five dollars; *Provided*, No fee shall be allowed for drawing any indictment or information which may be quashed.

Legislation. Sec. 2583. Act 1903 p. 224 § 1, amending Act 1891 p. 221 § 1 subdivisions 2, 3 which amended G. S. § 1418. G. L. § 1163.

2584. Deputy district attorneys—Compensation.

SEC. 66. That the deputies of district attorneys shall be entitled to such compensation for services rendered by them in any county as the judges of the district court, or a majority of them in the district wherein such county is situate may direct, not exceeding the sum of two thousand dollars annually to each deputy, payable out of the fees of the office of the district attorney: *Provided*, Such compensation shall not be allowed in excess of the sum approved in writing by the district attorney of such district.

Legislation. Sec. 2584. Act 1903 p. 207 § 1, superseding Act 1899 p. 333 § 3, which amended Act 1891 p. 308 § 3.

CITATIONS.

Compensation of a deputy under subdivision 6 of the act of 1891 was wholly within the discretion of the commissioners.
—*Merwin v. Boulder County*, 29 C. 172, 67 P. 286.

2585. Delinquent children—When fees allowed district attorney.

SEC. 67. That no fees shall be allowed any district attorney in any case where the accused shall be a child or children sixteen

years of age or under, excepting where the proceedings shall be in accordance with the provisions of the statute of the state concerning delinquent children, unless such cases shall come within any exception provided for in said act.

Legislation. Sec. 2585. Act 1903 p. 223 § 1, entitled:

AN ACT

To Provide for Fees for District Attorneys of the State of Colorado to be Earned and Collected in Cases Against Juvenile Delinquents.

2586. Same—Fees.

SEC. 68. In all cases coming within the provisions of said act the following fees shall be taxed and allowed, and not otherwise: For each information filed and trial thereof in the county court, in counties of the first and second class, the sum of ten (10) dollars; and in counties of all other classes, the sum of fifteen (15) dollars; *Provided*, In all cases where the form of delinquency would otherwise constitute a capital offense, and in all cases coming within any exception in the statute of this state concerning juvenile delinquents the fee shall be as now provided by law in such cases; *And provided, further*, That there shall be joined in one information all delinquent children charged or to be charged in connection with the same offense.

[The act referred to in the above two sections is sections 586 to 608.]

Legislation. Sec. 2586. Act 1903 § 2, cited under § 2585.

The first fee bill under the territory is found in Act 1861 p. 387. It contained an anomolous clause allowing fees to district judges for each trial (p. 395) which was repealed by Act 1862 p. 68. The whole Act was largely substituted by Act 1864 p. 81 and by Act 1865 p. 62.

Amended as to juror's fees by Act 1865 p. 55. A new fee bill was passed by Act 1867 p. 64 for clerks of court, sheriffs, notaries and masters in chancery.

All these acts were codified by R. S. (1868) p. 316. Amended as to witness fees and district attorneys by Act 1870 p. 75 and as to notaries by Act 1874 p. 198.

CHAPTER L.

FENCES.

Section.

- 2587. Lawful fence defined.
 - 2588. Height of fence.
 - 2589. Owner of legal fence may recover for trespass—Animals held for security.
 - 2590. Partition fence.
 - 2591. Cost of partition fence, how recovered.
 - 2592. Repairs of partition fence.
 - 2593. When fence may be removed from the land of another.
 - 2594. When partition fence may be removed.
 - 2595. Not destroy fence district.
-

2587. Lawful fence defined.

SECTION 1. The following shall be a lawful fence in the state of Colorado: Post and board fences, made of sound posts, not less than five inches in diameter, set substantially in the ground, not more than eight feet apart, with three boards of one-inch lumber, eight inches wide, and not more than eight inches apart, or four boards, one inch thick and six inches wide, and not more than six inches apart, securely fastened with nails or otherwise; a three pole fence, with sound poles not less than two inches in diameter at the small end, with post as above, one at each end and one in the center, or near the center, of each panel; a fence of three barbed wires, with posts not more than sixty feet apart, with stays between not more than ten feet apart, or three barbed wires with posts not more than thirty-three feet apart, with one stay midway between; or two barbed wires with pole at top, not less than two inches in diameter, wired at each end to posts, the posts not to be over eight feet apart; or four plain wires, with posts not less than five inches in diameter, and not over fifty feet apart, with stays between, not over ten feet apart; *Provided, That*

any division or road fence made of wires shall be deemed unlawful that contains a less number of wires, posts and stays than above described. All other fences made of boards, rails, poles, wires, stone or hedge plants, or other material, which shall be as strong and as well calculated to protect enclosures as those above described, shall be considered lawful fences; and said plain wires, as described in this section, shall not be less than number nine, and all wires shall be properly stretched.

Legislation. Sec. 2587. Act 1889 p. 164 § 1, amending Act 1885 p. 220 § 1, which amended G. S. § 1461, Act 1879 p. 68 § 1, which amended Act of 1877, G. L. § 1202.

CITATIONS.

Under G. S. 1469 the fence law before becoming operative in any county was required to be locally adopted.—*Morris v. Fraker*, 5 C. 426, 433. *Maudlin v. Hanscombe*, 12 C. 205, 20 P. 619. *Nuckolls v. Gaul*, 12 C. 362, 21 P. 41.

The owner of crops can not recover damages done thereto by cattle, unless the crops are inclosed by a sufficient fence.—*Morris v. Fraker*, 5 C. 426, 433. *Nuckolls v. Gaut*, 12 C. 362, 21 P. 41.

It is the duty of a herder of sheep to use ordinary care to prevent them trespassing upon crops.—*Willard v. Mathesus*, 7 C. 77, 1 P. 690.

The act of 1885 does not exempt from liability one who wilfully drove his sheep upon the land of another against the owners protest.—*Bell v. Gonzales*, 35 C. 140, 83 P. 640.

2588. Height of fence.

SEC. 2. All fences shall be not less than four feet and six inches in height.

Legislation. Sec. 2588. Act 1885 p. 221 § 2, entitled:

AN ACT

Concerning Fences, and to Repeal Chapter Thirty-nine, of the General Statutes of the State of Colorado, Entitled "Fences."

The text amends G. S. § 1462 Act 1879 p. 69 § 2, which made the legal height four feet.

2589. Owner of legal fence may recover for trespass—Animals held for security.

SEC. 3. Any person making and maintaining in good repair

around his or her enclosure, any fence such as described in section one of this act, may recover in a suit for trespass, before any court having competent jurisdiction, from the owner of any animal or animals which break through any such fence, in full for all damages sustained on account of such trespass, together with costs of suit; and the animal or animals so trespassing may be taken and held for security for the payment of such damages and costs; and no person or persons shall be allowed to recover damages for any injury to any crops or grass or garden products, or other vegetable products, unless the same, at the time of such trespass or injury, was enclosed by a legal and sufficient fence, as before described.

[Section 1 referred to is section 2587.]

Legislation. Sec. 2589. Act 1885 § 3, cited under § 2588. Same as G. S. § 1463. G. L. § 1203, but changing the words "the nearest court" to read "any court."

CITATIONS.

In the absence of local acts, under laws of 1877, the owner had to prove that the crops were enclosed by a fence sufficient to turn ordinary stock.—*Morris v. Fraker*, 5 C. 433.

The herder of sheep must use ordinary care to prevent them trespassing upon crops enclosed by a pole and slab fence. (*Morris v. Fraker* ante, distinguished).—*Willard v. Mathesus*, 7 C. 77, 1 P. 690.

This act does not exempt from liability one who wilfully herds sheep upon uninclosed land of another against his protest.—*Bell v. Gonzales*, 35 C. 140, 83 P. 640. *Sweetman v. Cooper*, 20 A. 7, 76 P. 926.

The statute has no application where the fence is wilfully broken down by the defendant.—*Fugate v. Smith*, 4 A. 203, 35 P. 283. *Norton v. Young*, 6 A. 190, 40 P. 157.

2590. Partition fence.

SEC. 4. That where the lands of two persons join, and both parties shall occupy the land, that it shall be the duty of each party to build one-half of the line fence; and that where one party shall have already erected a fence upon any line between himself and any other party, and the other party wishes to occupy the land adjoining, it shall be his duty to either build one-half of said

fence, or pay the party owning said fence one-half of its cash value.

Legislation. Sec. 2590. Act 1885 § 4, cited under § 2588.

The text combines G. S. §§ 1459 and 1460 which were G. L. §§ 1200 and 1201. R. S. p. 328 §§ 1, 2, Act 1861 p. 143 §§ 1, 2.

CITATIONS.

A fence erected ten feet inside the line cannot be regarded as built in compliance with the statute. Actual residence on land not required.—*Maudlin v. Hanscombe*, 12 C. 205, 20 P. 620.

2591. Cost of partition fence, how recovered.

SEC. 5. Partition fences shall be erected and kept in repair at the joint cost of the owners of the respective adjoining enclosures; *Provided*, Said land is occupied, except as otherwise agreed by the parties. If, after due notice be given by either party, and reasonable length of time has elapsed the other party neglect or refuse to erect or repair, or cause to be erected or repaired, the one-half of said fence, the party giving notice may proceed to erect, or cause to be erected or repaired, the entire partition fence, and collect by law one-half the entire cost thereof from the other party; *Provided*, The respective parties occupy the same for purposes requiring a fence, *And provided, further*, Any judgment obtained against the owner of any land for the value of any such partition fence, shall be a lien upon the land to which such fence is appurtenant; *Provided*, A notice of the pendency of said action be filed, as in other cases.

Legislation. Sec. 2591. Act 1885 § 5, cited under § 2588.

The first sentence of the text is a repetition of G. S. § 1464, G. L. § 1204. The remainder of the text is G. S. § 1465, G. L. § 1205, adding the words "or repair" to follow the verb "to erect" and "or repaired" to follow "erected," and adding the last two provisos.

2592. Repairs of partition fence.

SEC. 6. The respective owners of adjoining enclosures shall keep up and maintain in good repair all partition fences between such enclosures in equal shares, so long as they shall continue to occupy and improve the same.

Legislation. Sec. 2592. Act 1885 § 6, cited under § 2588. Same as G. S. § 1466. G. L. § 1206.

2593. When fence may be removed from the land of another.

SEC. 7. When any person shall unwittingly, or by mistake, erect a fence upon the land of another, and when, by a line legally determined, that fact shall be ascertained, such person may enter upon such premises, and remove such fence at any time within one year after giving or receiving notice that such line has been run, as aforesaid; *Provided*, That when the fence to be removed forms any part of a fence enclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop could, with reasonable diligence, have been gathered and secured.

Legislation. Sec. 2593. Act 1885 § 7, cited under § 2588. Same as G. S. § 1467, G. L. § 1207, except that the words "or receiving" are inserted before the word "notice."

2594. When partition fence may be removed.

SEC. 8. When any person shall wish to lay open his or her enclosure, he or she shall notify any person owning an adjoining enclosure, and if such person shall not pay to the party giving notice, one-half the value of any partition fence between such enclosure within one year after receiving such notice, the party giving such notice may proceed to remove one-half of such fence, as provided in section seven (7) of this act, if the person giving such notice has erected such fence, or paid his or her proportion of the cost of erecting the same.

[Section 7 referred to is section 2593.]

Legislation. Sec. 2594. Act 1885 § 8, cited under § 2588. G. S. § 2594. G. L. § 1208.

2595. Not destroy fence district.

SEC. 9. This act shall not have any effect to destroy any fence district already organized, and the laws governing such organization,* nor apply to any county that has local laws governing the protection of growing crops and herding of stock, until the first day of April, 1886.

Legislation. Sec. 2595. Act 1885 § 9, cited under § 2588. Same as G. S. § 1472, G. L. § 1212 down to the star. That which follows the star was inserted in 1885.

Sec. 10 of the Act of 1885 repealed the Fences chapter of the G. S., but as the above notes indicate re-enacted it with changes, except that it repealed without re-enactment G. S. §§ 1469-1471, which were copied from Act 1877, G. L. §§ 1209-1211 and which provided for special elections on petition to vote for or against the "fence law" which submission was manifestly contrary to the tenor of the constitutional provision against special legislation. Art. V § 25. But possibly fences might come within the excepting clause of that section.

Before the adoption of the constitution there was a great amount of legislation local to certain counties on the subject of fences. See Act 1862 p. 68; 1864 pp. 87, 90; 1865 p. 61; 1866 pp. 56, 56; R. S. (1868) pp. 328, 329; 1872 pp. 129, 131, 132; 1874 p. 132; 1876 p. 11.

CHAPTER L-A.

FIREARMS.

Section.

- 2595-A. Firearms defined.
 - 2595-B. Non-repeal.
 - 2595-C. Record of sales.
 - 2595-D. Punishment.
 - 2595-E. Jurisdiction—Appeal.
-

2595-A. Firearms defined.

SECTION 1. In this act, the term "firearms" means a pistol, revolver or other weapon of any description loaded or unloaded from which any shot, bullet, or other missile can be discharged, and the length of the barrel of which, not including any revolving, detachable or magazine breach, does not exceed twelve inches.

The words "antique firearms" shall not include firearms as hereinbefore defined, with or for which ammunition is not sold, or which there is reasonable ground for believing are not capable of being effectually used.

Legislation. Sec. 2595-A. Sec. 1 of Act of 1911, S. B. No. 426, Entitled:

AN ACT

Relating To the Sale, Rental and Giving Away of Firearms in the State of Colorado; and Providing a Penalty for the Violation Thereof.
[Approved May 26, 1911.]

2595-B. Non-repeal.

SEC. 2. This act shall not affect the rights conferred or penalties imposed, concerning firearms by the constitution of this state, or by laws heretofore enacted and now in force, except in so far as said laws are inconsistent herewith.

Legislation. Sec. 2595-B. Sec. 2 of Act of 1911, cited under § 2595-A.

2595-C. Record of sales.

SEC. 3. Every individual, firm or corporation engaged, with this commonwealth, in the retail sale, rental or exchange of fire-

arms, pistols, or revolvers, shall keep a record of each pistol or revolver sold, rented or exchanged at retail. Said record shall be made at the time of the transaction in a book kept for that purpose and shall include the name of the person to whom the pistol or revolver is sold or rented, or with whom exchanged; his age, occupation, residence, and, if residing in a city, the street number therein where he resides; the make, caliber and finish of said pistol or revolver; together with its number and serial letter, if any; the date of the sale, rental or exchange of said revolver; and the name of the employe or other person making such sale, rental or exchange. Said record book shall be open at all times to the inspection of any duly authorized police officer.

Legislation. Sec. 2595-C. Sec. 3 of Act of 1911, cited under § 2595-A.

2595-D. Punishment.

SEC. 4. Every individual, firm or corporation failing to keep the record provided for in the first section of this act, or who shall refuse to exhibit such record when requested by a police officer, and any purchaser, lessee or exchanger of a pistol or revolver, who shall, in connection with the making of such record, give false information, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than twenty-five, nor more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

Legislation. Sec. 2595-D. Sec. 4 of Act of 1911, cited under § 2595-A.

2595-E. Jurisdiction—Appeal.

SEC. 5. Justices of the peace, within their respective counties, shall have jurisdiction to hear and determine all cases arising under the provisions of this act, and appeal from judgment shall be to the county courts in the respective counties in the same manner as is now provided by law for appeals from judgments of the justices of the peace in the cases of misdemeanor.

Legislation. Sec. 2595-E. Sec. 5 of Act of 1911, cited under § 2595-A.

CHAPTER LI.

FLAGS.

Section.

2596. (Repealed.)

2596-A. State flag adopted.

2597. Unlawful to display any but flag of United States—Exception.

2598. Penalty for violation of preceding section.

2599. Unlawful to print advertisement on flag—Mutilation—Penalty—
Construction of word "Flag"—Possession.

2596. (Repealed.)

See note to § 2596-A.

2596-A. State flag adopted.

SECTION 1. That a state flag be and the same is hereby adopted to be used on all occasions when the state is officially and publicly represented, with the privilege of use by all citizens upon such occasions as they may deem fitting and appropriate. Said flag shall consist of three alternate stripes to be of equal width and at right angles to the staff, the white stripe being the middle one, the proportion of the flag being a width of two-thirds (2-3) of its length. At distance from the staff end of the flag of one-thirty-sixth (1-36) of the total length of the flag, there shall be a circular red C, of the same color as the red in the national flag of the United States. The diameter of the letter one-sixth (1-6) of the width of the flag. The inner line of the opening of the letter C shall be three-fourths (3-4) of the width of its body or bar, and the outer line of the opening shall be double the length of the inner line thereof. Completely filling the open space inside the letter C shall be a golden disk. Attached to the flag shall be a cord of gold and silver, intertwined, with tassels, one of gold

and one of silver.' All penalties provided by the laws of this state for the misuse of the national flag shall be applicable to the said state flag.

Legislation. Sec. 2596-A. § 1 of Act of 1911 S. B. No. 118, entitled:

AN ACT

To Create a State Flag for the State of Colorado.

(This Act was filed in the office of the secretary of state June 5, 1911, without governor's approval.)

Sec. 2 repealed § 2596, which created a state banner. § 1 of Act of 1907 p. 296.

**2597. Unlawful to display any but flag of United States—
Exception.**

SEC. 2. It shall be unlawful to display any flag upon any state, county or municipal buildings in this state, except the flag of the United States. *Provided, however,* That whenever any foreigner shall become the guest of the United States, or of the state of Colorado, or of any city of this state, or upon the occasion of the visit of any foreign minister, envoy or ambassador in his official or representative capacity, the flag of the country of which such person shall be a citizen may be displayed upon such public buildings; and it shall be unlawful to display the flag of any anarchistic society upon any public or private building or in any street procession or parade within the state of Colorado.

Legislation. Sec. 2597. Act 1895 p. 177 § 1, entitled:

AN ACT

Relating to the Display of Flags on Public and Private Buildings, and in Processions and Parades and Providing a Penalty for the Violations of This Act.

2598. Penalty for violation of preceding section.

SEC. 3. Any violation of this act is hereby declared a misdemeanor and shall be punished by a fine of not less than fifty nor more than five hundred dollars.

[This act is section 2597 and section 2598.]

Legislation. Sec. 2598. Act 1895 § 2, cited under § 2597.

2599. Unlawful to print advertisement on flag—Mutilation—Penalty—Construction of word flag—Possession.

SEC. 4. Any person, who in any manner, for exhibition or display, shall after this act takes effect, place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature, upon any flag, standard, color or ensign of the United States or state flag of this state or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which, after this act takes effect, shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall, after the first day of September, 1905, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this act takes effect, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article, or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color, or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by and in the name of any citizen of this state, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this state; and two or more penalties may be used for and recovered in the same action or suit. The words, flag, standard, color or ensign, as used in

this subdivision or section, shall include any flag, standard, color, ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign, of the United States of America, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign, of the United States of America.

The possession after this act takes effect, by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be made any thing unlawful at any time by this section, or of any article or substance or thing on which shall be any thing made unlawful at any time by this section, shall be presumptive evidence that the same is in violation of this section, and was made, done or created after this act takes effect, and that such flag, standard, color, ensign, or article, substance, or thing, did not exist when this act takes effect.

[Flags for public schools. Section 5928.]

Legislation. Sec. 2599. Act 1905 p. 237 § 1, entitled:

AN ACT

**To Prevent and Punish the Desecration, Mutilation or Improper Use of the
Flag of the United States of America.**

It supersedes Act 1901 p. 182.

CHAPTER LII.

FORCIBLE ENTRY AND DETAINER.

Section.

- 2600. Forcible entry and detainer defined.
 - 2601. Forcible entry prohibited.
 - 2602. Forcible detention prohibited.
 - 2603. Unlawful detention defined.
 - 2604. Possessor may cultivate and gather crops.
 - 2605. Demand shall be made in writing.
 - 2606. Notice to quit.
 - 2607. Service of notice to quit.
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 - 2609. Action, how commenced.
 - 2610. Issuance and return of summons.
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 - 2613. Trial before justice of peace.
 - 2614. Judgment—Writ of restitution.
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 - 2616. Non-suit.
 - 2617. Appeals—Bond.
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 - 2619. Appeals tried de novo.
 - 2620. Rules of practice.
 - 2621. Service of summons from court of record—Proof of service—
Appeals.
 - 2622. Appeals and writs of error—Bond.
 - 2623. When deposit of rent is paid.
 - 2624. Writ of restitution issue forty-eight hours after judgment.
 - 2625. When plaintiff shall recover damages.
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2600. Forcible entry and detainer defined.

SECTION 1. If any person or persons shall enter upon or into any lands, tenements or mining claims, or other possessions, with force or strong hand or multitude of people, whether any person be actually upon or in the same at the time of such entry

or not; or if any person by threats of violence or injury to the party in possession, or by such words or actions as have a natural tendency to excite fear or apprehension of danger, shall gain possession of any lands, tenements, mining claims or other possessions, and detain and hold the same, such person or persons so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this act; and if any person shall enter peaceably upon any lands, tenements, mining claims or other possessions, whether any person be actually in or upon the same at the time of such entry or not, and shall by force turn the party in possession out, or by threats or by words or actions which have a natural tendency to excite fear or apprehension of danger, frighten the party out of possession, and detain and hold the same, such person or persons so offending shall be deemed guilty of a forcible detainer within the meaning of this act; and if any person shall enter upon or into any lands, tenements, mining claims or other possessions, by force or by threats of violence, or words or actions which have a natural tendency to excite fear or apprehension of danger, shall intimidate the party entitled to possession from returning upon or possessing the same, such person or persons so offending shall be deemed guilty of a forcible entry, within the meaning of this act.

Legislation. Sec. 2600. Act of 1864 p. 91 § 2. R. S. p. 332 § 2. G. L. § 1230. G. S. § 1488.

This section which was the original declaratory proposition of what is properly understood as forcible entry was repealed by Act 1885 p. 231 § 26. That act repealed the whole of the forcible entry chapter of the general statutes and its § 3 (§ 2603) attempted to codify the law and to so enlarge it as to make it cover almost all cases where ejectment was the well known remedy.

The repeal of the text section with the codifying section still in force left the actual entry by violence without the protection of any statute so that it was found necessary to re-enact the text as was done by Act 1887 p. 271 § 2.

The language of the text and of the Act of 1864 was substantially copied from § 2 of the Act 1862 p. 70.

CITATIONS.

The allegations of the complaint showed fully and clearly a forcible detainer under this section.—*Miller v. Sparks*, 4 C. 311.

Entry and detainer remedies are fairly covered by the word "actions" as used in sec. 3845 as to appeals from justices.—*Reynolds v. Larkins*, 10 C. 129, 14 P. 114.

Instructions based upon G. S. secs. 1487 and 1488 after the passage of the act of 1885 was error.—*Gorman v. Peo.*, 17 C. 597, 31 P. 336.

A license reserved in a lease to make an entry by force does not contravene the statute. Defending possession by force if necessary.—*Goshen v. Peo.*, 22 C. 272, 44 P. 503.

Necessary showing of force: entering peaceably upon premises to seed land and refusing to vacate not sufficient.—*Good v. Heckler*, 19 A. 481, 76 P. 542.

2601. Forcible entry prohibited.

SEC. 2. No person shall enter into, or upon, any real property, except in cases where entry is allowed by law; and in such cases not with strong hand, nor with a multitude of people, but only in a peaceable manner.

[Penalty for associating to seize mining property. Section 4220.]

Legislation. Sec. 2601. Act of 1885 p. 224 § 1 substantially the same as G. S. § 1487. G. L. § 1229. R. S. p. 232 § 1. Act 1864 p. 91 § 1. Act 1862 p. 69 § 1.

The title of the Act of 1885 was amended by Act 1887 p. 370 § 1 by inserting the words "Forcible and unlawful detainer and forcible entry" before the words "and detainer." Both titles are instances of confusing and useless verbiage.

CITATIONS.

Plaintiff must show actual possession: constructive possession not sufficient.—*Wier v. Bradford*, 1 C. 15, 17. *Kelley v. Andrews*, 3 A. 124, 32 P. 175.

Instructions based upon G. S. secs. 1487 and 1488 after the passage of the act of 1885 was error.—*Gorman v. Peo.*, 17 C. 597, 31 P. 336.

2602. Forcible detention prohibited.

SEC. 3. No person, having peaceably entered into, or upon, any real property, without right to the possession thereof, shall forcibly hold, or detain, the same, as against the person who has a lawful right to such possession.

Legislation. Sec. 2602. Act of 1885 p. 224 § 2.

CITATIONS.

Unlawful detainer lies where a tenant holds over; where a vendee in possession refuses to proceed with his purchase: where

CITATIONS CONTINUED.

a judgment debtor retains possession after sheriffs' deed has passed.—*Liss v. Wilcozen*, 2 C. 88. *Wilcozen v. Morgan*, 2 C. 474.

One not a party to the original contract, had, by his answer put himself in a position of privy for the purpose of the action.—*De La Mar v. Hurd*, 4 C. 443.

Where a tenant held over after notice and after a lease to another the landlord is the proper party to sue for unlawful detainer.—*Mageon v. Aikire*, 41 C. 341, 92 P. 721.

2603. Unlawful detention defined.

SEC. 4. Any person shall be deemed and held guilty of an unlawful detention of real property in the following cases:

First—When entry is made, without right or title, into any vacant or unoccupied lands or tenements.

Second—When entry is made, wrongfully, into any public lands, tenements, mining claims, or other possessions, which shall be claimed, or held, by a person who may have located, entered, or settled upon the same, in conformity with the laws, rules, and regulations of the United States, or of this state, in relation thereto.

Third—When any lessee, or tenant, at will, or by sufferance, or for any part of a year, or for one or more years, of any real property, including a specific or undivided portion of a building, or dwelling, shall hold over, and continue in possession of, the demised premises, or any portion thereof, after the expiration of the term for which the same were leased, or after such tenancy, at will or sufferance, has been terminated by either party.

Fourth—When such tenant, or lessee, holds over, without permission of his landlord, after any default in the payment of rent, pursuant to the agreement under which he or she holds, and three days' notice, in writing, has been duly served upon the tenant, or lessee, holding over, requiring, in the alternative, the payment of the rent or the possession of the premises; *Provided*, It shall not be necessary, in order to work a forfeiture of such agreement, for non-payment of rent, to make a demand for such rent on the day on which the same becomes due; but a failure

to pay such rent, upon demand, whenever made, shall work a forfeiture.

Fifth—When such tenant, or lessee, holds over, without such permission, contrary to any other condition, or covenant, of the agreement under which he holds, after three days' notice, in writing, has been duly served upon such tenant, or lessee, requiring the delivery of the possession of the premises so held.

Sixth—When the property has been duly sold, under any power of sale, contained in any mortgage, or trust deed, which was executed by such person, or any person, under whom he or she claims, by title, subsequent to date of the recording of such mortgage, or trust deed, and the title under such sale has been duly perfected, and the purchaser at such sale, or his assigns, has duly demanded the possession thereof.

Seventh—When the property has been duly sold, under the judgment, or decree, of any court of competent jurisdiction, and the party, or privies, to such judgment, or decree, after the expiration of the time of redemption when redemption is allowed by law, refuses, or neglects, to surrender possession thereof, after demand therefor has been duly made by the purchaser at such sale, or his assigns.

Eighth—When an heir, or devisee, shall continue in possession of any premises sold and conveyed by any executor, or administrator, under an order of any court of competent jurisdiction, or under authority in the will of devisor, after demand therefor being duly made.

Ninth—When a vendee, having obtained possession under an agreement to purchase lands, or tenements, and having failed to comply with his agreement, withholds possession thereof from his vendor, or assigns, after demand therefor being duly made.

Legislation. Sec. 2603. Act of 1885 p. 224 § 3. It enlarges the scope of the unlawful detainer Acts by its enumeration of causes, usurping to this summary proceeding a large class of cases which were formerly brought and still may be and ought generally to be brought in ejectment. See note to § 2600.

The fourth subdivision of the text was covered by G. S. § 1491. G. L. § 1203. R. S. p. 333 § 5.

As to forcible dispossession of mining claim, see §§ 4220, 4221.

Jurisdiction under the 6th, 7th, 8th and 9th subdivisions was first

given by the Act of 1885. All the other subdivisions were covered by previous legislation but in such varying terms that it is useless to collate them.

The prior Acts not specifically cited under this chapter were Act of 1861 p. 251, substituted by Act 1862 p. 69, substituted by Act 1864 p. 91. It. S. Chap. 35. G. L. Chap. 38. G. S. Chap. 41.

CITATIONS.

Under subdivision 4 the plaintiff must aver and prove a demand in writing for possession.—*Doss v. Craig*, 1 C. 177.

In unlawful detainer for holding over a defendant may show that he entered as a purchaser and not as a tenant.—*Klopper v. Keller*, 1 C. 413, 3 C. 132.

Monthly tenancy: holding over: construction of the word "terms" in statute of 1868.—*Hurd v. Whitsett*, 4 C. 86, 89.

Sec. 1493 G. S. regarding change in terms of lease applied only to tenancies from month to month.—a tenant holding over holds at same rent.—*Reithman v. Brandenburg*, 7 C. 481, 4 P. 788.

Insufficient allegations as to a decree under which plaintiff claimed to be entitled to possession.—*Laffey v. Chapman*, 9 C. 305, 12 P. 152.

Where the entry was forcible, no demand for possession was necessary: the owner of the fee, as well as a stranger, may be guilty of forcible entry.—*Farncomb v. Stern*, 18 C. 281, 32 P. 613.

In an action under subdivision 6 held that a deed did not take effect until delivery although dated earlier.—*Kelly v. Hallack L. & M. Co.*, 22 C. 222, 43 P. 1004.

In ordinary actions of forcible entry and unlawful detention, title to the property can not be tried. In actions under subdivision 6 equitable defenses may be interposed and the title be a subject of inquiry.—*Hamill v. Bank*, 22 C. 388, 45 P. 413.

Sec. 2608 requiring causes under subdivisions 6, 7, 8 or 9 to be certified, refers only to justices of the peace.—*Id.* 389, 392.

When there is sufficient evidence the findings of the trial court should be affirmed.—*Id.* 26 C. 15, 55 P. 1099.

In an action under subdivision 9, presumption that contract was in writing: vendee cannot question vendor's title: complaint need not allege ownership.—*Ruth v. Smith*, 29 C. 154, 68 P. 278.

A demand for damages or rent can not be joined in an action for possession under subdivision 3, but by sec. 2614 rent may be recovered in an action under subdivision 4.—*MacKenzie v. Porter*, 40 C. 343, 91 P. 916. *Tyler v. McKenzie*, 43 C. 237, 95 P. 944.

Insufficiency of an answer in an action under subdivision 9 of this section.—*Bonnell v. Gill*, 41 C. 60, 92 P. 13.

A landlord may maintain an action under paragraph 5 al-

CITATIONS CONTINUED.

though he has given the lease to another for the ensuing term.—*Mageon v. Alkire*, 41 C. 342, 92 P. 720.

Although a complaint under subdivision 3 contains claims for rent and damages, matters not triable therein, defendant by answering waives defects in the summons and service caused by a failure to comply with sec. 2610 and 2621.—*Tyler v. McKenzie*, 43 C. 237, 95 P. 944.

Notice to quit is not required where by the express words of the lease the term ends at a day certain.—*Dulmaine v. Reed Bldg. Co.*, 46 C. 471, 104 P. 1038.

Subdivision 4 of this section referred to where an appeal was dismissed for failure to file sufficient bond under sec. 2622.—*Getty v. Miller*, 10 A. 333, 51 P. 167.

Sufficiency of complaint considered in an action under subdivision 6.—*Miller v. Hall*, 14 A. 368, 60 P. 194.

2604. Possessor may cultivate and gather crops.

SEC. 5. In all cases arising under sub-divisions three (3) to nine (9), inclusive, of the preceding section, the person in possession shall be entitled to cultivate and gather the crops, if any, planted or sown by him previous to the services of the demand to deliver up possession, and then grown or growing on the premises; and shall have the right to enter such premises for the purpose of cultivating or removing such crops, first paying or tendering to the party entitled to the possession of said premises a reasonable compensation for such use of the land before removing such crops.

Legislation. Sec. 2604. Act 1885 p. 225 § 4.

CITATIONS.

An assignment that the court erred in holding this section not applicable not considered because of insufficiency of abstract.—*Kelly v. Doyle*, 12 A. 39, 54 P. 395.

2605. Demand shall be made in writing.

SEC. 6. The demand required by section three of this act shall be made in writing, specifying the grounds of the demandant's right to the possession of such premises, describing the same,

the time when the same shall be delivered up, and shall be signed by the person claiming such possession, his agent or attorney.

[Section 3 referred to is section 2603.]

Legislation. Sec. 2605. Act 1885 p. 226 § 5.

CITATIONS.

A demand signed by plaintiff's attorney is sufficient to support an action under a foreclosure sale of deed of trust.—*Ensley v. Page*, 13 A. 455, 39 P. 226.

2606. Notice to quit.

SEC. 7. In all cases of tenancy, from year to year, the same may be terminated by notice, in writing, to quit, duly served three months prior to the end of the year; a six months' tenancy may be terminated by service of a similar notice of one month; a monthly tenancy may be terminated by a similar notice of ten days; a tenancy at will may be terminated by a similar notice of three days; such notice shall describe the premises, the particular time when the tenancy will terminate, and be signed by the party giving such notice, his agent or attorney; *Provided*, No notice to quit shall be necessary from or to a tenant whose term is, by contract, to end at a time certain. Any person in possession of real property, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown.

Legislation. Sec. 2606. Act 1885 p. 226 § 6, amending G. S. § 1504. G. L. § 1246. The G. L. section was Act 1864 p. 96 § 19, R. S. § 18 p. 336, as amended by Act of 1876 p. 76 § 1.

CITATIONS.

This section recognizes a monthly tenancy as distinct from one from year to year.—*Hurd v. Whitsett*, 4 C. 82.

A notice to pay higher rent under sec. 1504 G. S. was not a notice to quit.—*Reithman v. Brandenburg*, 7 C. 481, 4 P. 788.

Notice to quit is not necessary where by contract a tenancy ends at a given time.—*Lowell v. Rice*, 46 C. 471, 104 P. 943.

This section has no application in an action to recover rent for premises occupied without a lease from month to month, brought after the premises had been voluntarily vacated.—*Salomon v. O'Donnell*, 5 A. 36, 36 P. 894.

CITATIONS CONTINUED.

Where there is no agreement and the rent is payable monthly the tenancy is from month to month.—*Edmundson v. Prerille*, 12 A. 74, 54 P. 394.

2607. Service of notice to quit.

SEC. 8. In all cases where notice to quit or demand for possession of real property shall be required to be given, such notice or demand may be served by delivering a copy thereof to the tenant or other person occupying such premises, or by leaving such copy with some person a member of the tenant's family, above the age of fifteen years, residing on or being in charge of the premises, or, in case no one is in the actual occupation of the premises, and the tenant cannot be found, then by posting such a copy in some conspicuous place on the premises.

Legislation. Sec. 2607. Act 1885 p. 226 § 7. Framed on Act 1877. G. L. § 1247. G. S. § 1505.

2608. Jurisdiction of courts—Justice of peace certify cause to district court.

SEC. 9. The district courts in their respective districts, and county courts and justices of the peace, in their respective counties, and superior courts in their respective cities, shall have jurisdiction of all cases of forcible entry, forcible detainer or unlawful detainer, arising under this act, and the person or persons entitled to the possession of any premises may recover possession thereof by action brought in any of said courts, in the manner hereinafter provided. In all actions hereafter brought before justices of the peace under the sixth, seventh, eighth and ninth subdivisions of section three (3) of this act, where the allegations of the complaint shall be put in issue by a verified answer, the justice shall, upon the filing of said answer, suspend all proceedings therein and certify and send said cause and transmit the papers therein to the district court of the same county. Causes so certified by justices of the peace shall be proceeded with in the courts to which they have been certified in all respects as if originally begun in the court to which they have been certified as aforesaid.

[Section 3 referred to is section 2603.]

[When justice shall certify proceedings to district court. Section 517.]

[Bond for rent in case of change of venue. Section 3859.]

Legislation. Sec. 2608. Act 1887 p. 271 § 2, amending § 8 Act 1885 p. 226. This section was framed on G. S. § 1495. G. L. § 1237, which was Act 1864 p. 93 § 9. R. S. p. 334 § 9, as amended by Act 1872 p. 99 § 1.

CITATIONS.

The jurisdiction of justices of the peace is co-extensive with their respective counties.—*Reynolds v. Larkins*, 10 C. 129, 131, 14 P. 116.

The jurisdiction of the county court is not affected by the value of the premises.—*Kelly v. Hallack L. & M. Co.*, 22 C. 223, 43 P. 1003.

A justice of the peace has jurisdiction unless title to the property is directly involved.—*Hamill v. Bank*, 22 C. 389, 45 P. 413.

One desiring to have an action certified to the district court under this section must apply to the justice at the earliest opportunity.—*Bonnell v. Gill*, 41 C. 64, 92 P. 14.

The jurisdiction of a justice is not divested by setting up that the defendant is in peaceable possession by virtue of certain conveyances.—*Kelly v. Andrews*, 3 A. 126, 32 P. 175.

2609. Action, how commenced.

SEC. 10. The mode of commencing proceedings under the provisions of this act, shall be by filing a complaint in writing, duly verified by the plaintiff, his agent or attorney, which said complaint shall describe with reasonable certainty the lands, tenements, mining claims or other possessions which the plaintiff seeks to recover, and shall set forth the substantial facts upon which the plaintiff relies to recover possession of the premises described, together with the name of the person or persons in the possession or occupancy of such premises, and praying for his or her removal therefrom.

[Settler may maintain action. Section 5127.]

Legislation. Sec. 2609. Act 1887 p. 272 § 4, amending § 9 Act 1885 p. 226. It is framed on G. S. §§ 1496, 1497. G. L. §§ 1238, 1239. R. S. p. 334 §§ 10, 11.

CITATIONS.

Making demand for possession is a substantial fact which should be set out in the petition.—*Doss v. Craig*, 1 C. 179. *Klopper v. Keller*, 1 C. 413.

That a complaint alleges a demand for possession when no demand was necessary does not affect its sufficiency.—*Miller v. Sparks*, 4 C. 311.

An owner may maintain an action though the premises are occupied by an agent under a verbal agreement to take care of the same.—*Potts v. Magnes*, 17 C. 365, 30 P. 59.

This and section 2612 prescribe the pleadings in a justice court and on appeal to the county court no replication is necessary.—*Joss v. Hallett*, 39 C. 395, 89 P. 810.

Where the complaint alleged title in plaintiff and the answer was a general denial a motion to certify the cause to the district court on the ground that the title was in dispute was properly overruled.—*Bonnell v. Gill*, 41 C. 61, 92 P. 13.

2610. Issuance and return of summons.

SEC. 11. Upon filing the complaint, as provided in section 9 of this act, the justice of the peace or clerk of the court shall issue a summons, as in other cases, except that it shall command the officer to whom it may be directed to summon the person against whom such complaint shall have been made, to appear before the court at a place in such summons named, and on a day which shall not be less than five, nor more than seven days from the day of issuing the same in justices' courts; and in courts of record within the time prescribed by the code of civil procedure in other civil cases, to answer to the complaint of plaintiff, for that he (the defendant) is in possession of the premises (describing the same) which he holds unlawfully and against the right of the plaintiff, as it is said.

[Section 9 referred to is section 2609.]

Legislation. Sec. 2610. Act 1891 p. 227 § 1, amending Act 1887 p. 273 § 5, which amended § 10 Act 1885 p. 227.

G. S. § 1496, G. L. § 1238, R. S. p. 334 § 10 gave same time to appeal as in other civil actions. The text is framed on G. S. §§ 1496, 1506, G. L. §§ 1238, 1248.

CITATIONS.

By appearing and filing answer the defendant cured any defect in the issuance and service of the summons.—*Tyler v. McKensie*, 43 C. 236, 95 P. 944. *Cunningham v. Bostwick*, 7 A. 169, 43 P. 153.

2611. Service of summons issued from justice court.

SEC. 12. Such summons when issued out of a justice court, shall be served by the officer to whom the same is delivered, by delivering to and leaving with the defendant named therein a true copy thereof, if to be found within his county; but if such officer, after diligent search and careful inquiry, be unable to find the defendant within his county, he may serve such summons by leaving a copy thereof with any person being the agent of defendant, or a member of his family, above the age of fifteen years, residing upon or being in charge of the premises mentioned in such summons; or, if no person be found upon the premises, then by posting a copy of such summons in some conspicuous place upon such premises. Such service shall be made at least three days before the return day mentioned in such summons, and the time and manner of such service shall be endorsed upon such summons by the officer making service thereof; the cause shall then proceed in all respects, and with like effect as though personal service upon the defendant had been obtained.

Legislation. Sec. 2611. Act 1887 p. 273 § 6, amending Act 1885 p. 227 § 11. The amendment inserted the words "when issued out of a justice court."

2612. Answer of defendant.

SEC. 13. The answer of the defendant shall be in writing and verified by the oath of the defendant, his agent or attorney, and shall set forth all the substantial facts upon which he relies, entitling him to the possession of the property described in plaintiff's complaint, and shall either specifically admit or deny all of the material facts set forth in such complaint.

Legislation. Sec. 2612. Act 1885 p. 227 § 12.

G. S. § 1497, G. L. § 1239, R. S. p. 335 § 11, was less specific as to the answer, only requiring it to be in writing and under oath.

CITATIONS.

Answer and practice under R. S. 1868.—*Wier v. Bradford*, 1 C. 15.

On appeal to the county court a reply to new matter in the answer is not necessary.—*Joss v. Hallett*, 39 C. 395, 89 P. 810.

An answer held sufficient where defendant's possession was alleged to be held under option to purchase.—*Bonnell v. Gill*, 41 C. 65, 92 P. 14.

2613. Trial before justice of peace.

SEC. 14. Upon the trial of cases before justices of the peace, arising under this act, the proceedings shall be governed by the rules of practice and provisions contained in the statutes of this state concerning justices and constables, except as may be otherwise provided in this act. No adjournment shall be granted upon the application of the defendant for more than five days, unless he shall first give an undertaking with one or more sureties, to be approved by the justice, to the effect that the defendant will pay to the plaintiff all rent which may accrue to him during the pendency of such action, upon the real estate described in the complaint, and all costs and damages which the plaintiff may recover against him in said action.

[For change of venue see section 3859.]

Legislation. Sec. 2613. Act 1885 p. 228 § 13.

G. S. § 1498, G. L. § 1240, R. S. p. 335 § 12, covered the first sentence of the text but the requirement of bond in the second sentence was new in the Act of 1885.

2614. Judgment—Writ of restitution.

SEC. 15. Upon the trial of any action of unlawful detainer, for the cause mentioned in sub-division four, of section three, of this act, if the justice of the peace or jury shall find the defendant, or any of the several defendants, guilty of an unlawful detainer, such justice or jury shall further find the amount of rent due and payable at the time of the commencement of the action, together with the terms and conditions of the agreement between the parties in relation to the amount and time of payment of rent, and the justice shall recite such findings in his docket entry of proceedings in said action; and the justice shall,

upon such findings, enter judgment for the plaintiff, to have restitution of the premises; and shall, in addition thereto, render judgment in accordance with such finding in favor of the plaintiff and against the defendant, for the amount of rent found due and payable, together with all costs of the action; such justice shall, thereupon, issue a writ of restitution, and shall also issue execution separate from such writ, upon such judgment, for the rent found due and costs, as in other actions, unless the defendant take an appeal, as provided in this act; and the officer to whom such writ of restitution shall be delivered shall immediately execute the same, as commanded in such writ, and levy and collect the plaintiff's judgment for rent and costs, as in such execution directed.

[Section 3 referred to is section 2603.]

Legislation. Sec. 2614. Act 1885 p. 228 § 14.

CITATIONS.

The provision of this section does not bar an action for rent after recovering possession under subdivision 3 of sec. 2603.—*McKenzie v. Porter*, 40 C. 343, 91 P. 916.

A justice's judgment was defective where he failed to recite in his docket the entries required by this section, and a county court could not affirm the judgment.—*Reardon v. Barr*, 13 A. 387, 59 P. 216.

2615. Writ of restitution issue unless defendant appeals.

SEC. 16. In all actions brought under the provisions of this act, except when brought for the cause mentioned in sub-division four, of section three thereof, if the justice or jury shall find the defendant, or any of the several defendants, guilty of the allegations in the complaint, the plaintiff shall have judgment for the possession of the premises in question, and a writ of restitution shall be issued upon such judgment unless the defendant take an appeal, as provided in this act, and the officer to whom such writ of restitution shall be directed, shall be commanded in such writ to levy and collect the plaintiff's costs, as in other executions.

[Section 3 referred to is section 2603.]

Legislation. Sec. 2615. Act 1885 p. 228 § 15.

This section is new and seems to be merely cumulative to § 2614.

2616. Non-suit.

SEC. 17. If the plaintiff in any action brought for any of the causes mentioned in this act, shall, upon the trial thereon, become non-suit, or fail to prove his right to the possession of the premises described in the complaint, the defendant shall have judgment and execution for his costs.

Legislation. Sec. 2616. Act 1885 p. 229 § 16. G. S. § 1502. G. L. § 1244. R. S. p. 336 § 16. Act 1864 p. 96 § 16.

2617. Appeals—Bond.

SEC. 18. If either party shall feel aggrieved by the judgment rendered in such action, before such justice, he may appeal, as in other cases tried before justices of the peace, except as hereinafter provided; but no such appeal by a defendant shall stay proceedings on such judgment, unless the appellant shall, within forty-eight hours, Sundays excepted, after judgment, execute and file with the justice his undertaking to plaintiff, with two or more sureties, to be approved by the justice, to the effect that the appellant will pay all costs which have accrued, or may thereafter accrue, and all damages which plaintiff may have sustained, or may thereafter sustain, in consequence of the wrongful detention of the premises in question, during the pendency of such appeal. Upon taking such appeal and filing such undertaking, all further proceedings in the case shall be thereby stayed, and the appellate court shall thereafter issue all needful writs and process to carry out any judgment which may be rendered thereon in the appellate court; and the court in which the appeal is pending, at any time, require a new undertaking in a larger amount, and with the same or different sureties, to be approved by the appellate court, if deemed necessary to secure the rights of the parties; *Provided*. Such undertaking in appeal may be filed with and be approved by the clerk of the county or superior court, as in appeals in other cases.

[The superior courts above referred to have been abolished.]
[For appeals from justice court see sections 3845-3858.]

Legislation. Sec. 2617. Act 1885 p. 229 § 17. Framed on G. S. § 1499. G. L. § 1241, Act of 1872 p. 100 § 4, which was a substitute for R. S. p. 335 § 13. Act 1864 p. 95 § 13.

CITATIONS.

Under the acts of 1874 appeals from justices were taken to the probate court.—*Foote v. Walker*, 3 C. 339.

Appeals from justices lie to the county court by virtue of sec. 3345.—*Reynolds v. Larkins*, 10 C. 127, 129, 14 P. 115.

This and sec. 2624 do not mean that judgment for immediate possession is improper: their only effect is to delay enforcement.—*Dulmaine v. Reed Bldg. Co.*, 46 C. 470, 104 P. 1038.

On failure to file the additional bond required by sec. 2622 an appeal to the county court should be dismissed: such bond cannot be filed in the county court.—*Getty v. Miller*, 10 A. 333, 51 P. 168.

On failure to deposit amount of rent as required by sec. 2618 an appeal should be dismissed.—*Reardon v. Barr*, 13 A. 386, 59 P. 216.

2618. Defendant deposit rent when appeal is taken.

SEC. 19. In all appeals from the judgment of a justice of the peace, in an action founded upon sub-division four, of section three of this act, the defendant shall, in addition to the undertaking required by the preceding section, and at the time of the filing thereof, deposit with such justice the amount of rent found due and specified in such judgment; and, unless such deposit be made, the appeal shall be deemed and taken as not being perfected, and proceedings as upon such judgment shall thereupon be had accordingly. If the appeal be perfected, the justice shall transmit such deposit to the clerk of the appellate court, with the papers in such case; and the appellant shall thereafter, at the time when the rents shall become due, as specified in the judgment appealed from, and, as often as the same shall become due, deposit the amount thereof with the clerk of such appellate court; and, in case the said appellant shall, at any time during the pendency of such appeal, and before final judgment therein, neglect or fail to make any deposit of rent, falling due at the time or times specified in the judgment appealed from, the court in which such appeal is pending shall, upon such fact being made to appear, and upon motion of the appellee, affirm the said judgment appealed from, with costs; and proceedings shall thereupon be had as in like cases determined upon the merits.

[Section 3 referred to is section 2603.]

Legislation. Sec. 2618. Act 1885 p. 229 § 18. This section requiring deposit of rent seems to be entirely new.

CITATIONS.

Where there was a failure to make the deposit the proper remedy was to move to dismiss and not for affirmance.—*Reardon v. Barr*, 13 A. 386, 59 P. 216.

2619. Appeals tried de novo.

SEC. 20. In all cases of appeals from justices of the peace, the appellate court shall proceed to try the cause de novo, and no exception to any of the proceedings before the justice shall be taken or allowed, unless it shall appear that the justice had no jurisdiction of the subject matter in suit.

Legislation. Sec. 2619. Act 1885 p. 230 § 19. Framed on G. S. § 1506. G. L. § 1242. R. S. p. 336 § 14.

CITATIONS.

After motion to quash service of summons made by special constable was denied, a general appearance was a waiver of defects in service.—*Cunningham v. Bostwick*, 7 A. 173, 43 P. 153.

2620. Rules of practice.

SEC. 21. In all actions brought under any provision of this act, in any court of record of this state, the proceedings shall be governed by the rules of practice and provisions of law concerning the trial of causes in such court, except as may be otherwise provided in this act.

Legislation. Sec. 2620. Act 1885 p. 230 § 20. The terms of this section are not found in any single section of the prior statutes but the whole section seems to be entirely superfluous.

CITATIONS.

Objections to misjoinder of causes of action and of parties must be taken in the trial court or they are waived.—*Farncomb v. Stern*, 18 C. 282, 32 P. 612.

A replication not necessary when proceedings begin in justice court, nor after appeal to county court.—*Joss v. Hallett*, 39 C. 395, 89 P. 810.

2621. Service of summons from court of record—Proof of service—Appeals.

SEC. 22. Service of summons issuing out of a court of record shall be made in the same manner, and with like effect as prescribed before justice courts, in section 11 of this act, except that such service shall be made not less than ten days, nor more than thirty days before the return day of such summons. Proof of such service shall give the court jurisdiction of the person of the defendant, and of the subject matter of the suit. Upon the trial of all actions founded on subdivision four, of section 3 of this act, the finding and judgment, if for the plaintiff, shall be the same as prescribed in section 14 of this act, and in all appeals from judgments of courts of record, the appeals shall be perfected in the same manner as prescribed in section 18 of this act.

[Section 3 referred to is section 2603.]
[Section 11 referred to is section 2611.]
[Section 14 referred to is section 2614.]
[Section 18 referred to is section 2618.]

Legislation. Sec. 2621. Act 1887 p. 273 § 7, amending § 21 Act 1885 p. 230. The amendment is the provision as to the time between service and appearance. But § 2610, a later act, seems to control the text as to time to appear after service.

CITATIONS.

Actual appearance always cures a defect in service, when, except for such defect, the court would have jurisdiction.—*Tyler v. McKenzie*, 43 C. 237, 95 P. 944.

2622. Appeals and writs of error—Bond.

SEC. 23. Appeals and writs of error to the supreme court from the judgment of the district, or county courts of this state, in proceedings under this act, shall be allowed as in other cases; *Provided*, That in addition to the conditions now prescribed by law, the condition of the undertaking on appeal, and the time of filing the same shall be required by this act in cases of appeal from justices of the peace. And in cases of appeal, from judgments founded upon causes of action embraced in subdivision four of section 3 of this act the deposit of rent money during the pendency of appeal shall be made, or judgment of affirmance

shall be entered in the manner provided in section eighteen of this act; in all other cases where judgment is rendered for the possession of the premises the party appealing from such judgment, whether in justice courts or courts of record shall in addition to the undertaking hereinbefore mentioned, make and file an additional undertaking with sufficient sureties to be approved by the justice or court in such sum as may be fixed by such justice or court conditioned for the payment to the plaintiff of all sums that may be awarded to the plaintiff for the use and occupation of the premises, pending such appeal, either in said action or in any other action thereafter instituted by the plaintiff against said defendant, during the pendency of said appeal.

[Section 3 referred to is section 2603.]

[For appeals from county or district court see Code, sections 491-441.]

Legislation. Sec. 2622. Act 1891 p. 228 § 1, amending Act 1885 p. 230 § 22. Appeals and writs of error to the supreme court have always been allowed in this class of cases since 1862. G. S. § 1503. G. L. § 1245. R. S. p. 336 § 17. Act 1864 p. 96 § 17. Act 1862 p. 75 § 16.

CITATIONS.

Prior to the act of 1885 an appeal did not lie from the probate or county court to the supreme court.—*Liss v. Wilcoria*, 2 C. 8. *Brandenburg v. Reithman*, 7 C. 324, 3 P. 577. *Schafer v. Hegstom*, 18 A. 279, 71 P. 396.

The right of appeal is subject to the conditions prescribed by the code or other general law and other additional conditions provided in this section.—*Crane v. Farmer*, 14 C. 295, 23 P. 456. *Brennan Mer. Co. v. Vickers*, 31 C. 323, 73 P. 45.

On failure to file the additional bond in the justice court the county court was without jurisdiction, and could only dismiss the appeal.—*Getty v. Miller*, 10 A. 333, 51 P. 168. *Amter v. Woods Inv. Co.*, 10 A. 543, 51 P. 1010.

2623. When deposit of rent is paid.

SEC. 24. The rent money deposited, as provided for in this act, shall be paid to the landlord entitled thereto, upon the order of the court wherein the same is deposited, and at such time and in such manner as the court shall determine necessary to protect the rights of the parties.

Legislation. Sec. 2623. Act 1885 p. 231 § 23. This section is new.

2624. Writ of restitution issue forty-eight hours after judgment.

SEC. 25. Writs of restitution and execution for damages and costs shall issue the same as upon judgments entered in justices' courts; but no writ of restitution shall issue upon any judgment entered in any action under the provisions of this act, out of any court, until after the expiration of forty-eight hours from the time of the entry of such judgment; and such writs shall not be executed by the officer having the same, only in the day-time, and between sunrise and sunset.

Legislation. Sec. 2624. Act 1885 p. 231 § 24. This section is new.

CITATIONS.

This and sec. 2617 do not mean that a judgment for immediate possession is improper. Their only effect is to delay its enforcement.—*Dulmaine v. Reed Bldg. Co.*, 46 C. 470, 104 P. 1038.

2625. When plaintiff shall recover damages.

SEC. 26. If the plaintiff shall recover in any action brought under the provisions of this act, he shall be entitled to recover treble damages, with costs of suit, against the person found guilty, in a separate action for any damages or injury he shall have sustained during the time he shall have been deprived of the possession of the premises, by reason of any forcible entry, forcible detainer, or unlawful detainer, of the same by such defendant, except in cases arising under the sixth, seventh, eighth and ninth subdivisions of section three, of this act; and in all cases where an appeal shall have been taken by the defendant in the original action, and the judgment appealed from shall have been affirmed, and an undertaking shall have been given upon the taking of such appeal, the action provided for in this section may be maintained as well against the sureties in such undertaking as against the principal therein.

Legislation. Sec. 2625. Act 1885 p. 231 § 25. This section is new.

The first act on forcible entry, 1861 p. 251, restricted the action to justices courts. It was substituted by Act 1862 p. 69 § 17 of the 1862 Act repealing it in terms.

The 1862 Act gave jurisdiction to both district courts and justice courts but did not mention the probate court. That Act contained peculiar

provisions for enforcing arbitration (§§ 9-15) which have never been repealed in later enactments.

The Act of 1864 p. 91 repealed and substituted the Act of 1862 and by its § 18 again repealed the Act of 1861 which had already been repealed by the 1862 Act. This Act gave jurisdiction to the probate as well as the other courts mentioned.

The R. S. chapter on "Forcible entry and Detainer" is a substantial reprint of the 1864 Act repeated in the G. L. chapter §§ 1229-1246 with the additions of §§ 1247-1250.

The G. S. chapter reprinted the G. L. chapter, there having been no amendment between 1877 and 1883.

Upon the repeal of the G. S. chapter by the 1885 Act, as noted under § 2600 it killed without substitution, among others, §§ 1489, 1490, which defined unlawful detainer; also § 1492 as to demand of rent; also § 1507 as to service of summons by posting copy, and in particular § 1493 which was capable of great abuse, allowing the lessor by notice to change the terms of the lease. This § 1493 was Act 1864 p. 92 § 7, R. S. p. 333 § 7, amended by adding in 1877 the proviso found in G. L. § 1235.

CITATIONS.

This section referred to in an action where damages were claimed in the original suit.—*Wier v. Bradford*, 1 C. 15. *Faracomb v. Stern*, 18 C. 282, 32 P. 613.

A demand for damages can not be joined in an action for possession of the premises.—*MacKenzie v. Porter*, 40 C. 343, 91 P. 916.

CHAPTER LIII.

FORESTRY.

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2626. Trees not to be cut.

SECTION 1. No trees needed to conserve the snows, ice or water of any irrigation district shall be cut from any part of the public domain, except as hereinafter provided.

Legislation. Sec. 2626. Act 1901 p. 185 § 1, entitled:

AN ACT

Relating to the Preservation of the Forest Trees in the State of Colorado, and Providing Penalties for the Violation Thereof.

2627. Application to cut trees—Contents.

SEC. 2. Any person desiring to cut trees upon any lands owned by the state shall make application in writing to the registrar of the state board of land commissioners, which application shall contain: (a) A complete legal designation of the lands upon which it is desired to cut the trees; (b) The purposes for which such trees are to be used; (c) That he will carefully protect from fires or other damage all trees less in size than those desired to cut; (d) That he will entirely remove, as directed by the state board of land commissioners, all cut trees and their branches in such manner that fires may not consume the smaller trees; (e) That such trees as are desired for use are not necessary for the conservation of the irrigation waters of any irrigation water-shed.

Legislation. Sec. 2627. Act 1901 § 2, cited under § 2626.

2628. Registrar refer application to appraiser.

SEC. 3. The registrar of the state board of land commis-

sioners shall, on receiving such application, refer the same to the appraisers of state lands, who shall estimate the cost of examining and reporting upon the said application, and the said registrar of the state board of land commissioners shall thereupon require of the applicant a certified check payable to the state treasurer, covering the costs as estimated by the said appraiser of state lands, as well as the costs of all other proceedings, directed in this act, to determine whether such trees can be lawfully cut.

Legislation. Sec. 2628. Act 1901 § 3, cited under § 2626.

2629. Registrar publish application.

SEC. 4. The registrar of the state board of land commissioners shall cause the application of said person to cut trees to be published, for the full period of thirty days, in one or more daily or weekly newspapers having such circulation, as will fully advise the water users of the irrigation area upon the water-shed on which such trees are growing of the pendency of such application, and that protests to the granting of the application must be made within twenty days from the date of the last publication, which date shall be given in such published notice.

[For exchange of state lands in forest reserve see section 5218.]

Legislation. Sec. 2629. Act 1901 § 4, cited under § 2626.

2630. Water user may protest.

SEC. 5. Any water user of any irrigation district thus affected may protest to the state board of land commissioners against allowing said trees to be cut.

Legislation. Sec. 2630. Act 1901 § 5, cited under § 2626.

2631. Appraiser inspect land and trees—Report.

SEC. 6. Upon the expiration of the time for making protests as provided in section 4 of this act, the registrar of the state board of land commissioners shall refer all papers and proceedings to the appraiser of state lands, who shall thereupon personally inspect the designated lands and the trees growing thereon and carefully consider the protests, if any, from the water users, and

thereupon shall report in writing to the registrar of the state board of land commissioners advising that such trees may be properly disposed of, or against allowing the same to be done; but no trees less than ten inches in diameter two feet above the ground shall be allowed to be cut by any person whomsoever.

[Section 4 referred to is section 2629.]

Legislation. Sec. 2631. Act 1901 § 6, cited under § 2626.

2632. Notification to protestors—Injunction—Publication of sale—Costs.

SEC. 7. Should the report of the appraiser of state lands advise that the trees desired may be properly disposed of, the registrar of the state board of land commissioners shall at once notify by registered letter each and every protesting water user, if any, and such protesting water user or users shall thereafter be allowed fifteen days in which to commence injunction proceedings in any court of competent jurisdiction restraining the state board of land commissioners from disposing of said trees, and the said state board of land commissioners shall make no defense to the proceedings in injunction by said water users except at the full cost of the applicant desiring to cut said trees from the state lands. Should there be no protests, or should injunction proceedings fail, the said trees desired by said applicant shall be advertised in the paper having the greatest circulation within the state for a period of four weeks, one insertion during each week, and thereafter publicly sold at the state capitol in the city of Denver to the highest bidder, and if such highest bidder be some person other than the applicant, the legitimate costs of said applicant in prosecuting his application, which costs shall only be the expenses incurred by state officials as herein provided, shall be returned to the applicant; *Provided*. No bids shall be received which do not include the costs incurred by said applicant in determining the right to cut the desired trees. Should the appraiser of state lands report adversely to the cutting of the trees desired by applicant, or injunction proceedings bar a sale, said applicant shall not recover any of the costs incurred by reason of this act.

Legislation. Sec. 2632. Act 1901 § 7, cited under § 2626.

2633. Bond of person cutting trees.

SEC. 8. The state board of land commissioners shall require of all persons cutting trees upon state lands a bond in a sufficient amount, with good and approved security, for the carrying out in good faith of the provisions of this act.

Legislation. Sec. 2633. Act 1901 § 8, cited under § 2626.

2634. Tree defined.

SEC. 9. For the purposes of this act the word tree shall be held to mean all vegetable growth of a woody texture of any size whatsoever. No lands contemplated in this act shall be leased for any purpose whatsoever that will destroy the tree growth.

Legislation. Sec. 2634. Act 1901 § 9, cited under § 2626.

2635. No unguarded fire allowed.

SEC. 10. No open fires not sufficiently guarded to prevent spreading shall be allowed in any forest area in this state, and all live coals emptied from any stove or remaining from any open fire shall be at once and completely extinguished with water before leaving.

Legislation. Sec. 2635. Act 1901 § 10, cited under § 2626.

2636. Camping permit—Fee.

SEC. 11. No person, party or parties, shall be allowed to camp, either for business or pleasure, in any forest district of this state outside of the county in which they legally reside, without first taking out a permit so to do. Such permit shall bear such part of this act as relates to fires and their care, and shall be issued by the clerk of any county court within the state upon the payment of the sum of fifty cents as a fee. Permits must at all times be produced and shown to any game or forest warden, land appraiser, constable, sheriff, or other official empowered by law to demand the same, and such permit may be taken up by such warden, land appraiser or other official whenever the holder thereof shall wilfully violate the provisions of this act.

Legislation. Sec. 2636. Act 1901 § 11, cited under § 2626.

2637. Non-residents obtain services of warden.

SEC. 12. Non-residents of this state shall not camp within the forest districts for pleasure until they shall have obtained the services, at their own cost, of a game or forest warden as conservator of the state's interests, and such warden will be held strictly responsible for the care and prevention of fires from extending to the forest areas.

Legislation. Sec. 2637. Act 1901 § 12, cited under § 2626.

2638. Arrest of violators.

SEC. 13. Game and forest wardens, the land appraisers, and all peace officers of the state, are hereby charged with the enforcement of this act so far as it relates to fires in forest areas, and shall have full power to arrest, with or without warrant, all violators and deliver them to the nearest constable or sheriff, to be dealt with according to law.

Legislation. Sec. 2638. Act 1901 § 13, cited under § 2626.

2639. Fires caused by railroads—Damages.

SEC. 14. The right of way of any railroad within the forest areas of this state shall be kept free from inflammable material, and every locomotive used in such forest area shall be so equipped and operated as to prevent the setting on fire of any tree growth along or adjacent to such right of way. Any destruction caused by a violation of this section of this act shall be appraised by the appraiser of the state board of land commissioners, and if the appraised value of such destruction is not paid by the offending railroad company within ninety days of such appraisement, then and in that case the state board of land commissioners shall bring suit in the name of the state to recover all damages, losses and costs caused by or arising out of the wrongful acts or negligence of the offending railroad company. The measure of damages shall consist of not only the actual commercial value of the trees destroyed, but also their value as conservators of the snows, ice or irrigation waters contemplated in this act and promoters of adjacent tree growth. Each day's neglect to properly equip and

operate as herein directed any locomotive shall be deemed a separate offense, punishable in like manner and with like penalties. The provisions of this section of this act shall take effect and become operative on and after the first day of July, A. D. 1901.

[See also sections 5509-5512.]

Legislation. Sec. 2639. Act 1901 § 14, cited under § 2626.

2640. Deputy appraisers—Duties—Compensation.

SEC. 15. For the purpose of more fully carrying out the provisions of this act the state board of land commissioners are hereby empowered to employ such number of persons, not exceeding six, as in their judgment are necessary. Such persons shall be known as deputy appraisers. They shall receive for their services the sum of (5) dollars per diem, and shall have authority to arrest all violators of this act, with or without warrant, and deliver them to the most accessible justice of the peace or other officer authorized by law to act in such cases.

Legislation. Sec. 2640. Act 1901 § 15, cited under § 2626.

2641. Penalty for violation of act—Damage suit.

SEC. 16. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than twenty-five nor more than one hundred dollars or by imprisonment of not less than fifteen days nor more than sixty days or by both fine and imprisonment as the court may direct. Suit may also be brought in the name of the state for damages arising from fires destroying the timber or the trees of the state whenever such damage has been caused by any violation of the provisions of this act by any person or persons engaged in any business or pleasure pursuit whatever.

[This act comprises sections 2626 to 2642.]

Legislation. Sec. 2641. Act 1901 § 16, cited under § 2626.

2642. District attorneys prosecute.

SEC. 17. The district attorneys of the various judicial dis-

tricts of the state are hereby directed to prosecute in the name of the state all cases arising under this act.

Legislation. Sec. 2642. Act 1901 § 17, cited under § 2626.

2643. Department of forestry, game and fish created—Commissioner—Term—Salary—Expenses.

SEC. 18. The department of forestry, game and fish is hereby created. Immediately upon the passage of this act, and every two years thereafter, the governor of this state shall, by and with the advice and consent of the senate, appoint some person skilled in matters relating to forestry, game and fish, to be the state forest, game and fish commissioner, who shall be the head of said department, with power in the governor at any time to remove said commissioner for cause, and in vacation of the senate to fill any vacancy in said office by appointment in writing filed with the secretary of state. Said commissioner shall be a resident and citizen of this state, and shall hold his office for the term of two years, or until his successor shall be duly appointed and qualified. and all such appointments shall expire on February first. Said commissioner shall receive a salary of twelve hundred dollars per annum, payable monthly on warrants drawn by the state auditor, together with his reasonable and necessary traveling expenses approved by the auditor not exceeding \$500 per annum payable in the same manner.

Legislation. Sec. 2643. Act 1897 p. 36 § 1, entitled:

AN ACT

Relating to Forestry, Game and Fish, Prescribing Penalties for the Violation Thereof, and Repealing All Acts Inconsistent Therewith.

This section is abrogated by § 2725.

2644. Bond of commissioner.

SEC. 19. Before entering upon the duties of his office, said commissioner shall enter into a bond to the state of Colorado in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his said office, with sureties approved by the state auditor, the same to be filed with the secretary of

state; and shall make and file the oath required of other state officers.

Legislation. Sec. 2644. Act 1897 § 2, cited under § 2643.
The text is substituted by § 2726 a later Act.

2645. Office—Supplies—Clerk.

SEC. 20. Said commissioner shall be provided with an office at the state capitol, where all the official records of said department shall be kept and preserved, and with suitable furniture, stationery and other facilities for the transaction of the business of said department. He may appoint a clerk at a salary not exceeding six hundred dollars per annum, payable monthly upon warrants drawn by the state auditor, with power at any time to remove said clerk and appoint a successor.

Legislation. Sec. 2645. Act 1897 § 3, cited under § 2643.
Substituted by § 2727.

2646. Forest and game wardens—Salaries and expenses—Term.

SEC. 21. Said commissioner may, in writing, appoint three forest and game wardens, residents and citizens of this state, all such appointments to be filed with the state auditor. The forest and game wardens shall each receive a salary of nine hundred dollars per annum, and his reasonable and necessary traveling expenses not to exceed the sum of three hundred dollars per annum. All of the said salaries and traveling expenses shall be payable monthly upon warrants drawn by the state auditor.

Each of the said wardens shall serve for two years, and may at any time be removed by said commissioner, and his successor appointed in the same manner.

The commissioner may also appoint and remove at pleasure special game wardens to serve without pay, who shall have the same power as the other officers named in this act.

Legislation. Sec. 2646. Act 1897 § 4, cited under § 2643.
Sec. 2728 took the place of this section.

2647. Commissioner publish laws.

SEC. 22. Said commissioner shall publish in pamphlet form for general distribution any and all laws of the state relating to forestry, game and fish, at an expense not exceeding one hundred dollars.

[For publication of game and fish laws see section 2864.]

Legislation. Sec. 2647. Act 1897 § 5, cited under § 2643.
Section 2864 superseded this section.

2648. Duties of commissioner and assistants.

SEC. 23. It shall be the duty of said commissioner, wardens and deputies to enforce all the laws of this state relating to forestry, game and fish and to devote their entire time to the performance of the duties specified in this act. Said officers are hereby authorized and required to exercise the utmost care and vigilance in the protection and extinguishment of fires which may destroy forest growth; to arrest any and all persons found trespassing on forest lands or unlawfully cutting timber or wood thereon or in any other manner violating any of the laws of this state relating to forestry, game or fish; and to cause prosecutions to be instituted and conducted for the punishment of such offenses. In the performance of such duties said commissioner, wardens and deputies shall have all the rights and powers of sheriffs and constables, and may call to their aid such persons within the county as they may deem necessary. Any person who shall without cause refuse to give such aid when requested shall be deemed guilty of a misdemeanor. All of the said officers shall co-operate with the officers of the United States in the protection of forests and in the enforcement of the laws of the United States relating thereto.

Legislation. Sec. 2648. Act 1897 § 7, cited under § 2643.
Substituted by § 2732.

2649. Report of commissioner.

SEC. 24. Said commissioner shall biennially make to the governor of the state a report of the transactions of said department, and the governor shall embody the substance of the same in his report to the general assembly. Said report shall contain

an audited account of the work done, of moneys expended and recommendations for future work, the cost of said report not to exceed three hundred dollars.

[For appointment of game and fish commissioner see section 2725.]

Legislation. Sec. 2649. Act 1897 § 8, cited under § 2643.

Sec. 2733 superseded this section.

2650. Commissioner promote extension of forest areas.

SEC. 25. Said commissioner shall, as much as possible, promote the growth and extension of the forest areas of the state, and encourage the planting of trees and the preservation of the sources of water supply; but nothing in this act contained shall authorize the commissioner to interfere with the use of timber for domestic, mining or agricultural purposes, in accordance with existing laws. He shall have the care of all woodlands and forests which may at any time be owned or controlled by the state, and shall cause all such lands to be located and recorded in a book to be kept for that purpose.

Legislation. Sec. 2650. Act 1897 § 9, cited under § 2643.

See note to § 2654.

CITATIONS.

The act of 1881 p. 250 to encourage the planting of trees and providing a premium for trees planted was unconstitutional. —*Institute etc. v. Henderson*, 18 C. 100, 31 P. 714.

2651. Persons disqualified from appointment.

SEC. 26. No person who is directly or indirectly engaged in the manufacture of lumber, railroad ties, telegraph or telephone poles, or in any business requiring a large consumption of timber or wood, shall be qualified for the office of said commissioner, or for appointment to any office by said commissioner.

Legislation. Sec. 2651. Act 1897 § 10, cited under § 2643.

See note to § 2654.

2652. Guard lines to protect forests from fires.

SEC. 27. Any person who shall start or cause or suffer to

be started any fire on his own premises or elsewhere, in or near any woodland, forest or prairie, without having first prepared a good and sufficient guard line, by ploughing or otherwise around the place where the fire is to be started, sufficient to prevent the spreading of fire beyond the guard line, shall be deemed guilty of a misdemeanor. All camp fires must be totally extinguished before breaking camp.

[Penalty for failure to extinguish camp fire. Section 1879.]

[See also sections 1876 and 2737.]

[For recovery of damages from fire see section 2670.]

[Guard lines maintained by railroad. Section 5509.]

Legislation. Sec. 2652. Act 1897 § 11, cited under § 2643.

See note to § 2654.

2653. Misdemeanor to maliciously set fire.

SEC. 28. Any person who shall wilfully or maliciously set on fire, or cause or suffer to be set on fire, any woods, prairie or ground of any description, other than his own, or who shall intentionally or by neglect permit any destructive fire to pass from his own ground, shall be deemed guilty of a misdemeanor.

Legislation. Sec. 2653. Act 1897 § 12, cited under § 2643.

See note to § 2654.

2654. Misdemeanor to remove coniferous growth.

SEC. 29. Any person who shall cut or remove any coniferous growth from the public lands, or state lands, with the intent to ship or sell the same outside the state, shall be deemed guilty of a misdemeanor, but this provision shall not apply to the transplanting of trees for ornamental purposes.

[The remaining sections of the act of 1897 refer to game and fish and are superseded by the laws of '99, p. 184-222, sections 2725 to 2893 of this compilation.]

[Quære. Are sections 2643 to 2654 repealed by the forestry act, L. '01, p. 185-190, sections 2626 to 2642, and Game and Fish chapter, sections 2725 to 2753 of this compilation?]

Legislation. Sec. 2654. Act 1897 § 13, cited under § 2643.

This Act of 1897 repealed the Forestry Act of 1885 p. 299.

Answering the query of the official note we are of the opinion that §§ 2643-2654 are abrogated.

By the Act of 1897 (§ 2643) the department of "Forestry, Game and Fish" was created. By the Act of 1899, amended in 1907 (§ 2725) the department of "Game and Fish" was created.

The further sections of the Act of 1897 gave detailed provisions as to the duties of the commissioner and wardens as to game and fish and also as to the preservation of the forests. The later Act of 1899 substituted each of those sections as to game and fish, but provided nothing as to duties in regard to forestry because there were no longer a forest commissioner nor forest wardens. We are therefore of the opinion that none of the sections cited in the query are in force.

2654-A. Distribution of forest reserve money among the counties.

SEC. 30a. That all moneys to which the various counties of the state of Colorado are now or may hereafter become entitled under the act of congress of May 23rd, 1908, or other acts, in which counties a forest reserve, or any portion thereof is situated, shall at the beginning of each fiscal year and every six months thereafter be awarded and apportioned through the proper state officials of this state to such counties in proportion to the area of the forest reserve in each county; and such apportionment of said funds shall be determined by the state auditor, and the state auditor is authorized and directed to draw warrants upon the state treasurer in favor of the county treasurer of each county for the amount due each county under the apportionment and made direct to the county treasurers of said counties, and in accordance with the so-called agricultural appropriation act of congress, approved May 23rd, 1908, and the county commissioners of said county shall direct the said moneys to be credited to the school fund and the road fund of their respective county, apportioning said moneys between said two funds in amounts as they desire; *Provided*, That five per cent. of said moneys is the minimum amount that shall ever be credited to either one of said funds.

Legislation. Sec. 2654-A. Sec. 1 of Act of 1911, S. B. No. 475 which was substituted for § 1 of Act of 1909 p. 35, entitled:

AN ACT

Concerning the Money to Which Various Counties of This State are Entitled Under the Agricultural Appropriation Act of Congress, Approved May 23, 1908.

The Act of Congress referred to is found in U. S. Stats. 1907-08 part 1 p. 260.

2654-B. Office of state forester created.

SEC. 30b. That the state board of agriculture shall have, and hereby is vested with authority, in addition to and in connection with its duties heretofore provided, as a state board of forestry, and the said state board of agriculture is hereby given authority to appoint an officer to be known as the state forester. The incumbent in said office to be the professor or instructor of forestry at the state agricultural college, said state forester to hold office at the will of the state board of agriculture and except as hereinafter provided, to be under the control of the state board of agriculture. The state board of agriculture is further hereby authorized to furnish the necessary office, furniture, office supplies, stamps and postage, and office and field equipment, and such necessary assistance as may be required for the proper conduct of the office of state forester.

Legislation. Sec. 2654-B. Sec. 1 of Act of 1911, S. B. No. 261, entitled:

AN ACT

GIVING Authority to the State Board of Agriculture in Matters Pertaining to Forestry; Creating the Office of State Forester; Providing, for the Appointment of an Incumbent in Said Office; Prescribing the Duties of State Forester; Providing for the Salary, Office, Equipment, Assistants, Etc., of the State Forester; Requiring the Department of Game and Fish to Post Notices Concerning Fires, Etc.; and Providing a Penalty for Defacing, Removing or Destroying Said Notices; and Making an Appropriation for carrying Out the Provisions of This Act. (Approved May 27, 1911.)

2654-C. Salary.

SEC. 30c. The state forester shall receive a reasonable salary, to be fixed by the state board of agriculture, not to exceed \$2,500.00 per year, which sum shall include his salary as professor or instructor of forestry at the state agricultural college, and shall be paid out of the money hereby appropriated.

Legislation. Sec. 2654-C. Sec. 2 of Act of 1911, cited under § 2654-B.

2654-D. His duties.

SEC. 30d. It shall be the duty of the state forester to direct

the management of state forest reserves, if any; to collect and publish all data relative to the forests and other timber growing in the state, to co-operate, so far as it is practical, with the department of forestry of the United States government; to promulgate and publish rules for the prevention of forest fires and to cause the same to be posted in the forests upon state lands; to study the best conditions for preserving and growing of trees and forests.

Legislation. Sec. 2654-D. Sec. 3 of Act of 1911, cited under § 2654-B.

2654-E. Co-operate with land board.

Sec. 30e. The state forester shall co-operate with the state board of land commissioners in the matter of granting of permits for cutting timber upon state lands, giving them data concerning the proper timber to be cut and the proper method of cutting and removing the timber and the removal of the strippings and advising the state board of land commissioners concerning any matters of importance relative to the removal of the timber and the replanting and reforestation of state lands, but nothing herein contained shall be construed as amending the law at present existing giving the state board of land commissioners authority in said matter.

Legislation. Sec. 2654-E. Sec. 4 of Act of 1911, cited under § 2654-B.

2654-F. Forest fires.

Sec. 30f. The state forester shall advise, aid and assist in preventing and extinguishing forest fires on state lands and private lands and in the national forests in the state, but nothing herein contained shall be construed as amending the law making it the duty of the sheriffs of the various counties of the state to prevent and extinguish forest fires.

Legislation. Sec. 2654-F. Sec. 5 of Act of 1911, cited under § 2654-B.

2654-G. Advise upon and aid forest projects.

Sec. 30g. The state forester may advise or assist any individual, individuals, association or corporations, towns or cities, and examine any tract of land that it may be desired to devote

to the growing of trees or forests, to advise as to the planting thereof and the protection, preservation or reforestation of any private lands under an agreement with the owners of such land, whereby the owner or owners of such land shall pay to the state board of agriculture a sum equal to the total expense of the state forester or such assistants as may be appointed for said purpose.

Legislation. Sec. 2654-G. Sec. 6 of Act of 1911, cited under § 2654-B.

2654-H. Report on fires.

SEC. 30h. It shall be the duty of the sheriffs of the various counties of the state to report as soon as practical the occurrence of any fire in any forest or forests in the state, either on private or public lands, and upon receiving notice from any source of a fire or fires in any forest, it shall be the duty of the state forester to aid and assist in extinguishing the same.

Legislation. Sec. 2654-H. Sec. 7 of Act of 1911, cited under § 2654-B.

2654-J. Probe cause of forest fires.

SEC. 30j. It shall be the duty of the state forester to examine and inquire into the cause of fires occurring in the forests of the state, either on private or public lands, to prosecute violation of all laws pertaining to fires or the cutting or destruction of timber in the state, and report to the proper authority, any violation or dereliction on the part of any officer or officers of the state with relation to fires and in relation to the timber or forests in the state.

Legislation. Sec. 2654-J. Sec. 8 of Act of 1911, cited under § 2654-B.

2654-K. Post signs.

SEC. 30k. It shall be the duty of the commissioner of game and fish to have posted, in manner as required by the state forester, all notices prepared by the state forester concerning the prevention and extinguishing of forest fires.

Legislation. Sec. 2654-K. Sec. 9 of Act of 1911, cited under § 2654-B.

2654-L. Penalty for defacing signs.

SEC. 30l. Any person who removes, injures or defaces any sign or signs placed or maintained in pursuance of section 9 shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not to exceed \$25.00 and costs of prosecution, or imprisonment, not to exceed thirty days in the county jail, or both, at the discretion of the court.

Legislation. Sec. 2654-L. Sec. 10 of Act of 1911, cited under § 2654-B.

2654-M. Biennial report.

SEC. 30m. Said state forester shall, biennially, make to the governor, a report of the transactions of his office, and shall make such recommendations as he shall deem necessary with a view toward prescribing laws necessary to make his office an effective factor for the purposes for which it is created.

Legislation. Sec. 2654-M. Sec. 11 of Act of 1911, cited under § 2654-B.

2654-N. Appropriation.

SEC. 30n. There is hereby appropriated, for the biennial period of 1911 and 1912, out of any funds in the state treasury not otherwise appropriated, the sum of \$10,000.00 for the purpose of carrying into effect the provisions of this act, and there is hereby appropriated, for each successive biennial period, the said sum of \$10,000.00 for such purpose, and the auditor of state is hereby authorized to draw his warrants upon said funds, upon the order of the state board of agriculture, signed by its president and countersigned by its secretary.

Legislation. Sec. 2654-N. Sec. 12 of Act of 1911, cited under § 2654-B.

CHAPTER LIV.

FRAUDS AND PERJURIES.

Section.

- 2655. Conveyances to defraud void.
- 2656. Purchaser with notice—Prior grantee privy.
- 2657. Conveyance determinable at will of grantor void.
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- 2678. Sale of stock in bulk—Inventory—Notice to creditors.
- 2679. Written answers to inquiries—Penalty for giving false answer.
- 2680. To whom applicable.

2655. Conveyances to defraud.

SECTION 1. That every conveyance of any estate or interest in the lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a

valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

Legislation. Sec. 2655. Act 1861 p. 242 § 1. R. S. p. 337 § 1. G. L. § 1251. G. S. § 1510.

CITATIONS.

An agreement to locate lode mining claims for the benefit of others is not within the statute.—*Murley v. Ennis*, 2 C. 304.

The statute prescribes a rule of evidence and not a rule of pleading. As against a demurrer it will be presumed that the contract was in writing.—*Lehow v. Simonton*, 3 C. 347. *Tucker v. Edwards*, 7 C. 209, 3 P. 233. *Garbanati v. Fassbinder*, 15 C. 535, 25 P. 991. *McLure v. Koen*, 25 C. 287, 53 P. 1058. *Ruth v. Smith*, 29 C. 155, 68 P. 278.

The defense of the statute is in the nature of a special privilege and must be pleaded specially.—*Hexter v. Clifford*, 5 C. 173. *Hunt v. Hayt*, 10 C. 281, 15 P. 410. *Tynon v. Despain*, 22 C. 246, 43 P. 1039. *Petit v. Mayhew*, 43 C. 276, 95 P. 939. *Benjamin v. Mattler*, 3 A. 227, 32 P. 837. *Hamill v. Hall*, 4 A. 290, 35 P. 927. *Baldwin v. Cent. Sav. Bank*, 17 A. 14, 67 P. 179. *Cerrusite M. Co. v. Steele*, 18 A. 216, 70 P. 1091.

This section referred to in connection with sec. 2675 in an action concerning the sale of chattels.—*McKee v. Bassick M. Co.*, 8 C. 396, 8 P. 561.

A party can not rely upon the statute for the purpose of committing fraud. Resulting trusts are not within the statute and may be shown by parol testimony.—*Walker v. Bruce*, 44 C. 117, 118, 97 P. 252.

2656. Purchaser with notice—Prior grantee privy.

SEC. 2. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Legislation. Sec. 2656. Act 1861 p. 243 § 2. R. S. p. 338 § 2. G. L. § 1252. G. S. § 1511.

2657. Conveyance determinable at will of grantor void.

SEC. 3. Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation,

determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Legislation. Sec. 2657. Act 1861 p. 243 § 3. R. S. p. 338 § 3. G. L. § 1253. G. S. § 1512.

2658. Power to revoke and recover.

SEC. 4. When the power to revoke a conveyance of any lands or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Legislation. Sec. 2658. Act 1861 p. 243 § 4. R. S. p. 338 § 4. G. L. § 1254. G. S. § 1513.

2659. Conveyance before power vests.

SEC. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Legislation. Sec. 2659. Act 1861 p. 243 § 5. R. S. p. 338 § 5. G. L. § 1255. G. S. § 1514.

2660. Conveyance—Trust—Power, must be in writing.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writ-

ing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

Legislation. Sec. 2660. Act 1861 p. 243 § 6. R. S. p. 338 § 6. G. L. § 1256. G. S. § 1515.

CITATIONS.

An agreement to discover and locate lodes for joint benefit is not within the statute.—*Murley v. Ennis*, 2 C. 304. *Meylette v. Brennan*, 20 C. 242, 38 P. 75.

A verbal lease for the period of one year to begin in future is not void.—*Sears v. Smith*, 3 C. 290.

Where it is sought as against a deed absolute to establish a trust the contract must be established by conclusive proofs.—*Whitsett v. Kershow*, 4 C. 423. *Vandevier v. Fetta*, 20 C. 369, 38 P. 466 (affirming 3 A. 423, 34 P. 168). *Nesmith v. Martin*, 32 C. 83, 75 P. 590.

Express trusts being a matter of agreement between parties must be proved as contracts and when they relate to lands must be proved by writing under the hand of the party charged.—*Learned v. Tritch*, 6 C. 440.

A plea which sets forth a contract is good on demurrer though it did not aver that the contract was in writing.—*Tucker v. Edwards*, 7 C. 211, 3 P. 233. *Hunt v. Hayt*, 10 C. 281, 15 P. 410.

Resulting or constructive trusts are created by operation of law and the statute has no application thereto.—*Kayser v. Maugham*, 8 C. 238, 6 P. 803.

Where a party agrees to execute a declaration of trust but refuses, the terms of such trust may be proved by parol.—*Hall v. Lynn*, 8 C. 264, 5 P. 641.

This section cited in an action where the grantee promised but failed to put the terms of an alleged trust agreement in writing.—*Bohm v. Bohm*, 9 C. 106, 10 P. 793.

In the absence of fraud an absolute deed will not be construed as creating a constructive or resulting trust.—*Farrand v. Beshor*, 9 C. 292, 12 P. 197.

The statute of frauds is not involved in an action for settlement of accounts of a partnership to lease and operate a mine.—*Meagher v. Reed*, 14 C. 356, 24 P. 687.

A verbal agreement to share profits from the purchase and sale of real estate may be made independent of any contract for an interest in the land and when so made is not within the statute. Parol evidence to prove a trust by implication of law.—*Von Trocha v. Bamberger*, 15 C. 7, 24 P. 885.

CITATIONS CONTINUED.

Instance where the word "trustee" after the grantee's name, and certain other facts, made parol evidence admissible to show the purpose of the trust.—*Johnson v. Calnan*, 19 C. 175, 34 P. 908.

Title to real estate purchased with partnership assets is held in trust for the firm. Parol evidence admissible to show the trust.—*Hodgson v. Fowler*, 24 C. 278, 50 P. 1034 (reversing 7 A. 383, 43 P. 463.)

Where a husband conveyed land to his wife her agreement with the payee of his note to pay the note from money borrowed on the land was not within the statute.—*McIntire v. Schiffer*, 31 C. 247, 72 P. 1056.

Extrinsic oral evidence is not admissible to contradict a written contract and the rule applies with greater force to contracts required by the statute to be in writing.—*Nesmith v. Martin*, 32 C. 83, 75 P. 590.

This section held to have no application to an abandonment of an interest in a lode mining claim.—*Conn v. Oderto*, 32 C. 316, 76 P. 370.

An oral agreement giving the right to a co-owner to use a tunnel to convey ore from the outside claim is within the statute.—*Laesch v. Morton*, 38 C. 173, 87 P. 1081..

Where a person performs service under an oral contract to be paid in land he cannot invoke the statute and sue upon an implied assumpsit.—*Colo. Lumber Co. v. Dustin*, 38 C. 400, 87 P. 1142.

A verbal agreement for the division of water is taken out of the statute by open enjoyment of the water for years.—*Park v. Park*, 45 C. 348, 101 P. 403.

In an action to enforce a redelivery of a deed it was unnecessary to aver that a contract within the statute was in writing. The statute must be specially pleaded as a defense.—*Dennison v. Barney* (Feb. 1911), 113 P. 519.

Sufficiency of memorandum to establish a trust where one purchased property with money of another.—*Waterbury v. Fisher*, 5 A. 363, 38 P. 850 (affirmed 23 C. 256, 47 P. 277).

A parol contract to construct a ditch for joint use was not void under the statute.—*Croke v. Am. Nat. Bank*, 18 A. 3, 70 P. 229.

Where a contract to convey land was signed by another party a denial of making the contract was sufficient to entitle defendant to demand proof of written authority of the party who signed.—Ratification could be shown only in writing.—*People's M. & N. Co. v. Central C. M. Corp.*, 20 A. 563, 80 P. 479.

2661. Not to affect wills or trusts by operation of law.

SEC. 7. The preceding section shall not be construed to affect in any manner the power of the testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Legislation. Sec. 2661. Act 1861 p. 243 § 7. R. S. p. 338 § 7. G. L. § 1257. G. S. § 1516. See § 709.

CITATIONS.

The statute has no application to resulting or constructive trusts. Partnership formed for the sale of a mine and purchase made by one partner.—*Kayser v. Maugham*, 8 C. 238, 6 P. 807.

Where a wife fraudulently procures a conveyance of property from husband, equity will convert her into a trustee.—*Meldrum v. Meldrum*, 15 C. 491, 24 P. 1087.

2662. Contract of lease—Sale—Interest in lands—Must be written.

SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

[Lease of registered land must be registered. Section 779.]

Legislation. Sec. 2662. Act 1861 p. 243 § 8. R. S. p. 339 § 8. G. L. § 1258. G. S. § 1517.

CITATIONS.

A verbal lease for the period of one year, to begin in futuro, is not void.—*Sears v. Smith*, 3 C. 290.

Statement of what the memorandum must show on its face or by reference to other writing.—*Eppich v. Clifford*, 6 C. 494.

Under the statute as it existed prior to the amendment of 1887 (sec. 2663) an agent acting under parol authority might execute the written memorandum.—*Rice v. Bush*, 16 C. 489, 27 P. 722.

This section cited in holding that an action could be maintained in this state on a contract made in another, if valid where made, notwithstanding it would be void if made here.—*Wolf v. Burke*, 18 C. 268, 271, 32 P. 428.

CITATIONS CONTINUED.

Modification by parol of a written lease, for a period of less than one year is not within the statute.—*Doherty v. Doe*, 18 C. 456, 33 P. 165.

An oral agreement between mortgagor and a third person that the latter shall purchase and foreclose the mortgage and afterwards sell the lands paying the mortgagor the excess from the mortgage debt is not obnoxious to the statute.—*Heron v. Weston*, 44 C. 379, 100 P. 1130.

An agreement to pay one as compensation for securing title to certain mining claims, part of the proceeds of sale, not required to be in writing.—*Huff v. Hardwick*, 19 A. 417, 75 P. 593.

2663. Authorized agent may subscribe instrument.

SEC. 9. Every instrument required to be subscribed by any party under the last preceding section, may be subscribed by the agent of such party, lawfully authorized by writing.

Legislation. Sec. 2663. Act 1861 p. 244 § 9. R. S. p. 339 § 9. G. L. § 1259. G. S. § 1518. Amended by Act 1887 p. 274 by adding the final words "by writing."

CITATIONS.

As the statute existed in 1886 an agent might be authorized by parol to make a valid sale of real estate.—*Malone v. McCullough*, 15 C. 460, 24 P. 1041. *Rice v. Bush*, 16 C. 489, 27 P. 722. *Field v. Small*, 17 C. 387, 30 P. 1034.

Authority to sell does not authorize the giving of a mere option to purchase.—*Field v. Small*, 17 C. 387, 30 P. 1034.

By the statute as amended in 1887 a binding contract for the sale of real estate cannot be executed by an agent unless he be authorized by writing.—*Castner v. Richardson*, 18 C. 499, 33 P. 164.

The authority or employment of an agent to negotiate a purchase of real estate need not be in writing.—*Briggs v. Chamberlain*, 47 C. 395, 107 P. 1032.

A contract for the sale of real estate, by an agent without written authority was absolutely void.—*Clement v. Major*, 1 A. 302, 29 P. 20.

The agent's authority need not be under seal—it may be deduced from letters and telegrams.—*Sullivan v. Leer*, 2 A. 141, 29 P. 818.

2664. Courts may enforce specific performance.

SEC. 10. Nothing in this chapter contained shall be con-

strued to abridge the powers of courts of equity to compel the specific performance of agreements, in cases of part performance of such agreement.

Legislation. Sec. 2664. Act 1861 p. 244 § 10. R. S. p. 339 § 10. G. L. § 1260. G. S. § 1519.

CITATIONS.

When there has been part performance of a verbal contract which by the statute is required to be in writing the contract is enforceable in equity.—*Lipscomb v. Nichols*, 6 C. 293. *Hunt v. Hayt*, 10 C. 281, 15 P. 412.

The most important acts which constitute sufficient part performance are actual possession and the making of permanent improvements.—*Hunt v. Hayt*, 10 C. 282, 15 P. 412.

The evidence of part performance must be definite and clearly proved.—*Buckhorn Plaster Co. v. Cons. Plaster Co.*, 47 C. 521, 108 P. 27.

2665. All trusts for use of grantor void against creditors.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors existing of such person.

Legislation. Sec. 2665. Act 1861 p. 244 § 11. R. S. p. 339 § 11. G. L. § 1261. G. S. § 1520.

CITATIONS.

This section refers to cases where the use or trust for the grantor is the principal purpose accomplished by the conveyance, and not merely an incident thereto.—*Campbell v. Colo. C. & I. Co.*, 9 C. 70, 10 P. 255.

This section cited in an action concerning the bona fides of the transfer of a stock in trade and acceptance of note in payment by an insolvent firm.—*Sickman v. Abernathy*, 14 C. 186, 23 P. 451.

The claim that a conveyance of mining property for capital stock of a company came under this section, not borne out by the pleadings or evidence.—*Homestead M. Co. v. Reynolds*, 30 C. 334, 70 P. 423.

Sufficiency of evidence considered as to whether a secret trust was created by a bill of sale.—*Innis v. Carpenter*, 4 A. 34, 34 P. 1013.

CITATIONS CONTINUED.

An assignment of book accounts in payment of a past indebtedness held valid.—*Wilson v. Am. Nat. Bank*, 7 A. 195, 42 P. 1037.

Property conveyed to wife by husband when solvent may not afterwards be subjected to husband's debts.—*For v. Lipe*, 14 A. 264, 59 P. 850.

2666. Void agreements.

SEC. 12. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party charged therewith:

First—Every agreement that by the terms is not to be performed within one year from the making thereof.

Second—Every special promise to answer for debt, default or miscarriage of another person.

Third—Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

Fourth—Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless: *First*, A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, *Second*, Unless the buyer shall accept and receive part of such goods, or the evidence of some of them, of such things in action; or, *Third*, Unless the buyer shall, at the time, pay some part of the purchase money.

Legislation. Sec. 2666. Act 1861 p. 244 § 12. R. S. p. 339 § 12. G. L. § 1262. G. S. § 1521.

CITATIONS.

Several writings may be read to show the agreement: when the relation of the several parts may be shown by parol.—*Beckwith v. Talbot*, 2 C. 646, 648.

All promises must be in writing whether made before, at the time or after the debt.—*Wagner v. Hallack*, 3 C. 183.

The first paragraph is in no way connected with the leasing of lands.—*Sears v. Smith*, 3 C. 290.

A receipt signed and written across a bill of sale unsigned held a sufficient memorandum.—*Coon v. Ridgen*, 4 C. 281.

An original agreement to pay the debt of another founded on a sufficient consideration is not within the statute.—*Thatcher v.*

CITATIONS CONTINUED.

Rockwell, 4 C. 409. *Green v. Richardson*, 4 C. 586, Reprinted as *Green v. Morrison*, 5 C. 20.

Where no memorandum was made no part of the goods received nor any part of the purchase money paid, a contract for sale of goods was within the statute.—*Billin v. Henkel*, 9 C. 396, 13 P. 422.

An assignment, for moneys advanced, of sums which later fell due was not within this or secs. 2668 and 2672.—*Chamberlain v. Gilman*, 10 C. 101, 14 P. 110.

A special promise to answer for the debt of another, not in writing, is void.—*Cross v. Kistler*, 14 C. 572, 23 P. 903.

A promise to pay a note of another, and endorsing it, founded upon a new and sufficient consideration, was not within the statute.—*Fisk v. Reser*, 19 C. 93, 34 P. 574.

Antenuptial agreements conveying lands are within that class of contracts required to be in writing.—*Moore v. Allen*, 26 C. 200, 57 P. 698.

A contract to pay expert witness fees for testifying on behalf of officers of a corporation in a criminal case was not within the statute.—*Lincoln Mt. M. Co. v. Williams*, 37 C. 197, 85 P. 845.

An agreement by the purchaser of encumbered property to assume the notes was not within the statute.—*Enos v. Anderson*, 40 C. 398, 93 P. 475. *Mulvaney v. Gross*, 1 A. 112, 27 P. 878.

A promise to take back property and repay the purchase price is not within the statute.—*Mulford v. Torrey Expl. Co.*, 45 C. 89, 100 P. 599.

Where goods were delivered to one person, on promise of another to stand good for the bill, and were charged to the latter, held a direct promise.—*Tuttle v. Welty*, 46 C. 26, 102 P. 1069.

A letter from a sister requesting plaintiff to continue his medical services to her brother, held to create an original liability.—*Hall v. Allen*, 46 C. 355, 104 P. 489.

Letter which was insufficient to bind a wife to pay her husband's debt.—*Bohm v. Hoffer*, 2 A. 147, 29 P. 906.

Where no consideration passed and no rights were surrendered, a promise to pay the debt of another, not being in writing was void.—*Green v. Latcham*, 2 A. 416, 31 P. 233. *Burson v. Bogart*, 18 A. 450, 72 P. 605.

The memorandum required by the 4th subdivision is one expressing the subject matter of the contract in such terms that it can be gathered therefrom what the parties intended. Insufficient memorandum.—*Ellis v. Denver L. & G. R. Co.*, 7 A. 350, 43 P. 457.

CITATIONS CONTINUED.

An agreement by an agent to answer for the debt of his principal, is within the statute.—*Hersey v. Tully*, 8 A. 110, 44 P. 855.

Paragraph one does not refer to oral contracts which merely may not be performed one year. It refers to contracts which exclude performances within that time.—*Woodall v. Davis—Creswell Mfg. Co.*, 9 A. 199, 48 P. 670.

Facts held insufficient to constitute a valid sale of goods under this section.—*Wilson v. Ottenberg*, 10 A. 518, 51 P. 1019.

A contract to sell to plaintiff an interest in certain stock of a corporation was not within the statute after plaintiff had performed by payment.—*Cree v. Lewis* (Dec. 1910), 112 P. 328.

Where a mortgagee agrees to take the property and out of the proceeds pay an indebtedness of the mortgagor, the agreement to pay is not within the statute.—*Burson v. Bogart* (Feb. 1911), 113 P. 516.

Where stock was accepted by the purchaser and he promised to pay and had the certificate at the time of trial, the transaction was taken out of the statute.—*East v. McClung* (Feb. 1911), 113 P. 517.

An agreement not to engage in a certain business for a period of three years is within the statute.—*DeBord v. Holcomb*, 13 A. 163, 57 P. 548.

A contract for the sale of grain evidenced by letters and telegrams is a sufficient memorandum.—*Crystal P. F. Co. v. Butterfield*, 15 A. 250, 61 P. 481.

Where a defendant agreed to pay the board and store bills of its employees to plaintiff, and deduct the same from their wages the agreement was primary and not collateral.—*Cerrusite M. Co. v. Steele*, 18 A. 219, 70 P. 1091.

2667. Goods sold at auction—Memorandum.

SEC. 13. Whenever goods shall be sold at auction, and the auctioneer shall at the time of sale enter in a sale book a memorandum, specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person for whose account the sale is made, such memorandum shall be deemed a note of the contract of such sale, within the meaning of the last preceding section.

Legislation. Sec. 2667. Act 1861 p. 244 § 13. R. S. p. 339 § 13. G. L. § 1263. G. S. § 1622.

2668. If no delivery and change of possession, sale void.

SEC. 14. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, and this presumption shall be conclusive.

Delivery or record in case of chattel mortgage see section 512.]

Legislation. Sec. 2668. Act 1861 p. 244 § 14. R. S. p. 339 § 14. G. L. § 1264. G. S. § 1525.

The Act of 1861 after the words "in good faith" read: and shall be conclusive evidence of fraud unless it shall be made to appear on the part of the person claiming under said sale or assignment that the same was made in good faith and without any intent to defraud such creditors or purchasers. They were dropped in the revision of 1868.

CITATIONS.

A sale of goods which is not accompanied by immediate delivery, and followed by actual and continued change of possession is void as against creditors.—*McCraw v. Welch*, 2 C. 287, 291. *Goodrich v. Michael*, 3 C. 79. *Bassinger v. Spangler*, 9 C. 178, 10 P. 811. *Allen v. Steiger*, 17 C. 556, 31 P. 227. *Felt v. Cleg-horn*, 2 A. 5, 29 P. 813. *Donovan v. Gathe*, 3 A. 151, 32 P. 436. *Anders v. Barton*, 3 A. 327, 33 P. 142. *Springer v. Kreeger*, 3 A. 490, 34 P. 271. *Willis v. Roberts*, 18 A. 151, 70 P. 446. *Helgert v. Stewart*, 20 A. 203, 77 P. 1091.

When the subject, stock of goods, does not admit of actual delivery, assuming control and dominion sufficient. Facts held to be sufficient possession.—*Cook v. Mann*, 6 C. 21.

This section cited in an action where mortgaged goods were left in possession of mortgagor to retail in the usual course of trade.—*Wilcox v. Jackson*, 7 C. 526, 4 P. 969. *Hereford v. Benton*, 20 A. 501, 80 P. 499.

This section construed with section 2675 and held that a subsequent purchaser, with knowledge of a prior sale, takes subject to rights of prior vendee.—*McKee v. Bassick M. Co.*, 8 C. 395, 8 P. 562.

This section is not in any manner affected by section 2674 as to fraudulent intent.—*Ray v. Raymond*, 8 C. 471, 9 P. 17.

A voluntary transfer in trust and in preference of creditors

CITATIONS CONTINUED.

is not void under this section.—*Bailey v. Johnson*, 9 C. 368, 12 P. 210.

An agreement in consideration of money advanced, to turn over moneys to be subsequently received is not within the statute.—*Chamberlain v. Gilman*, 10 C. 101, 14 P. 110.

Facts which did not amount to a sufficient change of possession or ownership.—*Sweeney v. Coe*, 12 C. 487, 21 P. 705. *Baur v. Beall*, 14 C. 386, 23 P. 346. *Israel v. Day*, 41 C. 54, 92 P. 698. *Goff v. Landon*, 5 A. 454, 39 P. 70.

A contract for the sale of chattels to be subsequently delivered is not within the statute.—*Finning v. Hartman*, 14 C. 599, 23 P. 1005.

Property sold upon condition of delivery at a particular place is subject to attachment until delivered.—*Johnson v. Bailey*, 17 C. 64, 28 P. 83.

The term "creditors" includes all persons to whom the vendor may be indebted. The term "good faith" is limited to subsequent purchasers.—*Allen v. Steiger*, 17 C. 556, 560, 31 P. 227.

A conditional sale is not avoided by the fact that vendor continued in possession until performance of the condition.—*Roberts v. Hawn*, 20 C. 79, 36 P. 886.

Facts in the case showing sufficient change of possession.—*Crymble v. Mulvaney*, 21 C. 209, 40 P. 501. *Burchinell v. Smiale*, 5 A. 417, 38 P. 1097. *Conley v. Friedman*, 6 A. 160, 40 P. 348.

Cited in holding that a mortgagee who neglects to take immediate possession at maturity loses his lien as against creditors or purchasers.—*Stanley v. Citizens Coal Co.*, 24 C. 106, 49 P. 36. *Bear v. Hansen*, 16 A. 484, 66 P. 448.

Statute does not apply where prior to sale the property was in possession of a bailee.—*Hendrie & Bolthoff Co. v. Collins*, 29 C. 110, 67 P. 164.

Knowledge of sale required by subsequent purchaser in good faith.—*Farmer v. Hughes*, 38 C. 321, 88 P. 191.

One who is neither a creditor nor subsequent purchaser can not attack the transfer on the ground of no change of possession.—*Klug v. Munce*, 40 C. 279, 90 P. 604. *Graves v. Davenport*, 45 C. 273, 100 P. 430. *Morse v. Morrison*, 16 A. 452, 66 P. 170. *Hughes & Co. v. Hardenburg*, 19 A. 471, 76 P. 545.

If a conditional sale is rescinded the seller is bound to immediately take possession. Secret liens are constructively fraudulent.—*Coors v. Reagan*, 44 C. 132, 96 P. 968.

Delivery of goods to a common carrier and mailing bill of lading, satisfies the statute.—*Cary v. Williams*, 47 C. 259, 107 P. 220.

CITATIONS CONTINUED.

A concurrent possession in the vendor and vendee is not permitted.—*Bartell v. Griffin*, 47 C. 570, 108 P. 171.

The question of good faith, where chattels are left with vendor does not enter into the transaction.—*Burchinell v. Weinberger*, 4 A. 6, 34 P. 911. *Willis v. Roberts*, 18 A. 151, 70 P. 446.

This section applies only to sales of chattels in possession of vendor or under his control.—*Weiland v. Potter*, 8 A. 81, 44 P. 770.

Facts as to delivery held sufficient when goods were in possession of a third party when sold.—*Jones v. MacKenzie Bros. Co.* 19 A. 124, 73 P. 848.

2669. Creditors defined.

SEC. 15. The term "Creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession or control.

Legislation. Sec. 2669. Act 1861 p. 245 § 15. R. S. p. 340 § 15. G. L. § 1265. G. S. § 1524.

CITATIONS.

As to exempt property there are no creditors and the sale of a homestead is no fraud upon their rights.—*Barnett v. Knight*, 7 C. 374, 3 P. 747.

The term "creditors" covers all persons to whom the vendor is indebted: it is not limited to judgment creditors.—*Allen v. Steiger*, 17 C. 557, 31 P. 227. *Rizer v. McCarthy*, 3 A. 350, 33 P. 192.

A bill of sale not to be delivered until the happening of a certain event is not avoided by the fact that vendor continued in possession until performance of the condition.—*Roberts v. Hawn*, 20 C. 79, 36 P. 886.

Facts of delivery held sufficient when goods were in possession of a third party when sold.—*Jones v. MacKenzie Bros. Co.* 19 A. 124, 73 P. 848.

2670. Lawful agent may subscribe.

SEC. 16. Every instrument required by any of the provisions of this chapter to be subscribed by any party may be subscribed by the lawful agent of such party.

Legislation. Sec. 2670. Act 1861 p. 245 § 16. R. S. p. 340 § 16. G. L. § 1266. G. S. § 1525.

2671. Conveyances, bonds, suits, etc., to defraud creditors, void.

SEC. 17. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents and profits issuing thereupon, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debt or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with the like intent, as against the person so hindered, delayed or defrauded, shall be void.

[Lengthy for disposing of property to defraud creditors. Sections 1846 and 1847.]

Legislation. Sec. 2671. Act 1861 p. 245 § 17. R. S. p. 340 § 17. G. L. § 1267. G. S. § 1526.

Conveyance intended to defraud is void. § 2655.

Void chattel mortgage § 512. Sale without delivery of possession. § 2668.

CITATIONS.

A voluntary conveyance with intent to defraud existing creditors is void as to subsequent creditors also.—*Wilcoxon v. Morgan*, 2 C. 478.

This section referred to with others in an action concerning the sale of chattels.—*McKee v. Bassick M. Co.*, 8 C. 396, 8 P. 563.

The hindering and delaying which is meant is that which is intended to be produced by the assignor through motives of covin and malice or for his own benefit.—*Burr v. Clement*, 9 C. 9, 9 P. 633.

A justice of the peace has jurisdiction to try the issue in garnishment, where traverse alleges fraudulent chattel mortgage.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

A wife may maintain an action to set aside a fraudulent conveyance by husband, so as to enable her to collect alimony subsequently awarded.—*Gregory v. Filbeck*, 12 C. 382, 21 P. 490. *Fahey v. Fahey*, 43 C. 358, 96 P. 252.

When a conveyance is made in good faith as security, subsequent fraudulent acts will not bar the grantor's equity of redemption.—*Townsend v. Peterson*, 12 C. 496, 21 P. 621.

Conveyance between husband and wife for love and affection not good when result would be fraudulent.—*Phillips v. Rhodes*, 21 C. 217, 40 P. 453 (affirming 2 A. 70, 29 P. 1011).

CITATIONS CONTINUED.

In cases of conveyance between husband and wife they are required to clearly establish that the transaction was honest.—*Helm v. Brewster*, 42 C. 33, 93 P. 1104.

A sale or mortgage for full consideration is void if both parties participated in fraudulent intent.—*Id. Livingston v. Swoford Bros. Co.*, 12 A. 333, 56 P. 356.

It is not necessary that the party invoking the aid of the statute should have an existing cause of action at the time of conveyance.—*Fahey v. Fahey*, 43 C. 358, 96 P. 252. *House v. Johnson*, 19 A. 527, 76 P. 743.

2672. Grant or assignment of trust.

SEC. 18. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

Legislation. Sec. 2672. Act 1861 p. 245 § 18. R. S. p. 340 § 18. G. L. § 1268. G. S. § 1527.

CITATIONS.

This section cited in holding that resulting trusts may be shown by parol.—*Knox v. McFarra*n, 4 C. 597.

This section cited in holding that a certain assignment of moneys did not come within the statute.—*Chamberlain v. Gilman*, 10 C. 101, 14 P. 110.

2673. Conveyances void against heirs.

SEC. 19. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

Legislation. Sec. 2673. Act 1861 p. 245 § 19. R. S. p. 340 § 19. G. L. § 1269. G. S. § 1528.

2674. Intent, question of fact—Want of consideration.

SEC. 20. The question of fraudulent intent, in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be ad-

judged fraudulent against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

Legislation. Sec. 2674. Act 1861 p. 245 § 20. R. S. p. 340 § 20. G. L. § 1270. G. S. § 1529.

CITATIONS.

Declarations of a grantor at the time of executing a deed, admissible to show intent.—*Wilcozen v. Morgan*, 2 C. 473.

This section makes the question of fraud wholly one of fact and not of presumption.—*Thomas v. Mackey*, 3 C. 392. *Burdsall v. Waggoner*, 4 C. 258.

Extent of proof required to avoid a conveyance on the ground of fraud.—*Burdsall v. Waggoner*, 4 C. 258.

If an assignment was void it was immaterial that the grantee did not participate in the fraudulent intent, if he paid nothing.—*Knox v. McFarraan*, 4 C. 596.

This section does not in any manner affect the conclusive presumption of law declared by section 2668.—*Ray v. Raymond*, 8 C. 471, 9 P. 17.

Fraud is sometimes deemed a question of law, sometimes one of fact, and often a mixed question of law and fact.—*Burr v. Clement*, 9 C. 9, 9 P. 633.

This section does not deprive courts of the power to pronounce the judgment of the law in any case which the facts justify.—*Id. Peo. v. Court of Appeals*, 28 C. 445, 65 P. 43.

This section cited in holding that a justice or the peace has jurisdiction to try issues of fraudulent conveyance in garnishment proceedings.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

There is a wide distinction between fraud at law and fraud in fact.—*Sickman v. Abernathy*, 14 C. 184, 23 P. 451.

A deed intended to operate as a mortgage if given in good faith is not constructively fraudulent as to creditors.—*McClure v. Smith*, 14 C. 300, 23 P. 788.

If the result of a transaction was fraud upon creditors the law supplies the intention or proceeds regardless of the intention.—*Wells v. Schuster-Har Nat. Bank*, 23 C. 540, 48 P. 811.

When the grantor not a necessary party in an action to set aside conveyance; conveyance of property in exchange for capital stock does not make conveyance voluntary or show fraudulent intent.—*Homestead M. Co. v. Reynolds*, 30 C. 336, 70 P. 424.

Intention is to be determined from the facts and circumstances of each case.—*Innis v. Carpenter*, 4 A. 34, 34 P. 1011.

Where the intent to delay creditors is conceded it is for the court to say whether a transfer was fraudulent or not.—*Curran v. Rothchild*, 14 A. 503, 60 P. 1113.

2675. Purchaser with notice of fraud.

SEC. 21. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Legislation. Sec. 2675. Act 1861 p. 245 § 21. R. S. p. 340 § 21. G. L. § 1271. G. S. § 1530.

CITATIONS.

One who with notice of prior fraud, purchases of the grantee in a fraudulent conveyance, takes title subject to all its infirmities.—*Wilcoxon v. Morgan*, 2 C. 478.

Where the conveyance was not shown to be voluntary, it was essential to show that the grantee had notice of the fraud of his grantor.—*Burdsall v. Waggoner*, 4 C. 258.

Under this and section 2671 a subsequent purchaser of chattels who has knowledge of a prior transaction takes subject to the rights of the prior vendee.—*McKee v. Bassick M. Co.*, 8 C. 396, 8 P. 563.

This section cited in holding that a justice of the peace has jurisdiction to try issues of fraudulent conveyance in garnishment proceedings.—*Wclsh v. Noyes*, 10 C. 144, 14 P. 322.

Knowledge of facts sufficient to put a prudent person upon inquiry, is constructive notice of all facts which might have been ascertained by investigation.—*Reddin v. Dunn*, 2 A. 518, 31 P. 947 (affirmed 22 C. 127, 43 P. 1006).

2676. Construction of terms used.

SEC. 22. The term "Lands," as used in this chapter, shall be construed as co-extensive in meaning with "Lands, tenements and hereditaments;" and the term "Estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

Legislation. Sec. 2676. Act 1861 p. 246 § 22. R. S. p. 340 § 22. G. L. § 1272. G. S. § 1531. See § 707.

2677. Term conveyance how construed.

SEC. 23. The term "Conveyance," as used in this chapter,

shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

[For definition of terms used throughout the laws, see Chapter 140. Statutes.]

Legislation. Sec. 2677. Act 1861 p. 246 § 23. R. S. p. 341 § 23. G. L. § 1273. G. S. § 1532. See § 707.

2678. Sale of stock in bulk—Inventory—Notice to creditors.

SEC. 24. A sale of any portion of a stock of merchandise otherwise than in the ordinary course of trade in the regular and usual prosecution of the seller's business, or a sale of an entire stock of merchandise in bulk, shall be prima facie evidence that said sale was fraudulent as against the creditors of the seller, unless the seller and the purchaser together shall, at least five (5) days before the sale, make a full detailed inventory, showing the quantity and, so far as possible, with the exercise of reasonable diligence, the cost price to the seller of the various articles to be included in the sale; and unless such purchaser shall, at least five (5) days before the sale, in good faith, make full explicit inquiry of the seller as to the names and places of residence, or places of business of each and all the creditors of the seller, and the amount owing each creditor, and obtain from the seller a written answer to such inquiries; and unless such purchaser shall retain such inventory and written answer to his inquiries for at least six months after such sale; and unless the purchaser shall, at least five (5) days before the sale, in good faith, notify or cause to be notified, personally or by registered mail, each of the seller's creditors of whom the purchaser has knowledge, or can with the exercise of reasonable diligence acquire knowledge, of said proposed sale, and of the said cost price of the merchandise to be sold, and of the price proposed to be paid therefor by the purchaser.

Legislation. Sec. 2678. Act 1903 p. 225 § 1, entitled:

AN ACT

In Relation to the Sale of Stocks of Goods in Bulk.

2679. Written answers to inquiries—Penalty for giving false answer.

SEC. 25. The seller shall, at least five (5) days before such sale, fully and truthfully answer in writing each and all of said inquiries, and if such seller shall knowingly and wilfully make or deliver, or cause to be made or delivered, to such purchaser any false or incomplete answers to such inquiries, said seller shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five thousand (5,000) dollars or by imprisonment in the county jail not to exceed one year or by both such fine and imprisonment in the discretion of the court.

Legislation. Sec. 2679. Act 1903 § 2, cited under § 2678.

2680. To whom not applicable.

SEC. 26. Nothing contained in this act shall apply to sales by executors, administrators, receivers, assignees for the benefit of creditors, trustees in bankruptcy or any public officer conducting a sale in his official capacity.

[This act comprises sections 2678-2680 of this compilation.]

Legislation. Sec. 2680. Act 1903 § 3, cited under § 2678.

CHAPTER LV.

FUGITIVES.

Section.

- 2681. Requisition—Governor issue warrant—Sheriff arrest.
- 2682. Demand of fugitive from this state—Warrant to messenger.
- 2683. Expenses, how paid.
- 2684. Arrest of criminals from other states—Examination—Notice to governor—Warrants—Proceedings.
- 2685. Appearances of party bailed—Discharge.
- 2686. Forfeiture of recognizance.
- 2687. Security for costs—Default—Fee—Bill—Execution—Fees.
- 2688. Escape—Governor offer reward—Certificate—Auditor's warrant.
- 2689. Appropriation for rewards.
- 2690. Sheriff give certificate to party making arrest—Governor endorse.

2681. Requisition—Governor issue warrant—Sheriff arrest.

SECTION 1. Whenever the executive of any other state or of any territory of the United States shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant under the seal of the state to apprehend the said fugitive, directed to any sheriff, coroner or constable of any county of the state, or other persons whom the said executive may think fit to entrust with the execution of said process. Any of the said persons may execute such warrant anywhere within the limits of this state, and convey such fugitive to any place within this state which the executive in his warrant shall direct.

[See also Constitution of United States, article 4, section 2.]

Legislation. Sec. 2681. G. S. § 1533. G. L. § 1274. R. S. p. 341 § 1. Act 1861 p. 148 § 1, entitled:

AN ACT

Concerning Fugitives From Justice.

2682. Demand of fugitive from this state—Warrant to messenger.

SEC. 2. Whenever the executive of this state shall demand a fugitive from justice from the executive of any other state or territory, he shall issue his warrant under the seal of the state, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offense was committed.

[Limitation on prosecutions for crimes does not extend to fugitives. Section 1949.]

Legislation. Sec. 2682. G. S. § 1534. G. L. § 1275. Act 1861 § 2, cited under § 2681. R. S. p. 341 § 2.

CITATIONS.

Where one count of an indictment was quashed and a nolle entered as to the other the court was warranted in remanding an extradited prisoner to answer a new indictment.—*Smith, In re*, 4 C. 534.

2683. Expenses, how paid.

SEC. 3. The expenses which may accrue under the last preceding sections, shall be presented to the board of county commissioners of the county wherein the offense was committed, who shall immediately audit and ascertain the amount thereof and issue a warrant therefor on the treasurer of said county. The treasurer shall pay all warrants so issued, upon presentation, out of the general funds of the county as now provided by law for the payment of orders and warrants.

[Expense of keeping fugitive in jail. Section 3594.]

Legislation. Sec. 2683. Sec. 1 of Act of 1911, S. B. No. 382, approved May 28, Substitute for § 2683 which was Act of 1861 p. 149 § 3, R. S. p. 341 § 3. G. L. § 1276. G. S. § 1535. Sec. 2 was the Emergency Clause.

2684. Arrest of criminals from other states—Examination—Notice to governor—Warrants—Proceedings.

SEC. 4. Whenever any person within this state shall be charged, upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery or

counterfeiting, in any other state or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offense alleged against him, it shall be the duty of the judge or justice to commit him to the jail of the said county, or if the offense is bailable according to the laws of this state, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next district court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceedings to the executive of this state, so soon thereafter as may be. If, in the opinion of the executive of this state, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made, the executive of this state shall forthwith issue his warrant under the seal of the state, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this state. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the state, and to surrender him agreeably to said warrant.

Legislation. Sec. 2684. G. S. § 1536. G. L. § 1277. Act 1861 § 4, cited under § 2681. R. S. p. 342 § 4.

2685. Appearances of party bailed—Discharge.

SEC. 5. In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the

said recognizance, or continue it according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

Legislation. Sec. 2685. G. S. § 1537. G. L. § 1278. Act 1861 § 5, cited under § 2681. R. S. p. 342 § 5.

2686. Forfeiture of recognizance.

SEC. 6. If the recognizance shall be forfeited, it shall inure to the benefit of the state.

Legislation. Sec. 2686. G. S. § 1538. G. L. § 1279. Act 1861 § 6, cited under § 2681. R. S. p. 343 § 6.

2687. Security for costs—Default—Fee-bill—Execution—Fees.

SEC. 7. In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has

been served, and when the said fees are collected shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

[For fees of clerk and sheriff see sections 2528 and 2532.]

Legislation. Sec. 2687. G. S. § 1539. G. L. § 1280. Act 1861 § 7, cited under § 2681. R. S. p. 343 § 7.

2688. Escape—Governor offer reward — Certificate — Auditor's warrant.

SEC. 8. If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person into custody of such sheriff or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid and producing to the governor, the sheriff or justice's receipt for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

[Governor may offer \$1,000 reward. Section 6149.]

Legislation. Sec. 2688. G. S. § 1540. G. L. § 1281. Act 1861 § 8, cited under § 2681. R. S. p. 343 § 8.

2689. Appropriation for rewards.

SEC. 9. That there be and hereby is appropriated out of any money in the state treasury not otherwise appropriated the sum of two thousand dollars or so much thereof as shall be necessary for the purpose of paying rewards offered by the governor of the state for the apprehension of persons charged with the crime of murder.

Legislation. Sec. 2689. G. S. § 1541. Act 1881 p. 207 § 1, entitled:

AN ACT

To Make An Appropriation for the Payment of Rewards Offered by the Governor of the State for the Apprehension of Persons Charged with the Crime of Murder, and to Provide for the Manner in Which Said Rewards Shall Be Paid.

See note to next section.

2690. Sheriff give certificate to party making arrest--Governor endorse.

SEC. 10. That whenever the governor by his proclamation shall offer a reward for the apprehension of any such person or persons mentioned in the first section of this act the person making such arrest shall deliver the person or persons so arrested to the sheriff of the county where such crime was committed; the said sheriff shall give to the person making such arrest and delivery a certificate that he has delivered to the said sheriff the person or persons named in the proclamation of the governor. The governor shall endorse on said certificate his approval of the same and the amount of the reward so offered in his proclamation. On presentation to the auditor of state of such certificate so endorsed by the governor he shall draw his warrant on the state treasurer for the amount so certified.

[The first section referred to in last above section is section 2689.]

[Under the provision that all unexpended balances of an appropriation shall be turned back into the general fund, section 2716. Are the above two sections still in force?]

Legislation. Sec. 2690. G. S. § 1542. Act 1881 § 2, cited under § 2689.

Referring to the query in the official note: we suggest that these sections 2689, 2690 are in force and not affected by § 2716.

But the appropriation under § 2689 was limited in amount, was not a continuing appropriation, and the fund has doubtless long since been exhausted.

CHAPTER LVI.

FUNDING BONDS.

- I. SERIES OF 1895.—2691-2698.
 - II. SERIES OF 1897.—2699-2706.
 - III. SERIES OF 1907.—2707-2714.
 - IV. SERIES OF 1909.—2714-A.-2714-H.
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I. SERIES OF 1895.

Section.

- 2691. Deficiency.
 - 2692. Bond issue—Denomination—Interest—Maturity.
 - 2693. Series 1895—Form of bond—Registered.
 - 2694. Tax levy—Sinking fund.
 - 2695. Payment of interest.
 - 2696. Treasurer's report—Cancellation of bonds.
 - 2697. Form of bonds—Bonds, how sold.
 - 2698. Act irrepealable.
-

2691. Deficiency.

SECTION 1. It appears that during the fiscal years 1893 and 1894 there was a casual deficiency of revenue, resulting in just claims against the state, remaining unpaid, said claims being for rent, printing, publishing constitutional amendments, scalp bounties, county treasurer's bounty relief, insurance, moving to capitol building, stock indemnity, game and fish warden and commissioner, expenses of the state board of horticulture, expenses of the special session of the legislature, coal mine inspector examiner, steam boiler inspector, metalliferous mines inspector, board of medical examiners, unpaid salary and expenses of officers, and

their assistants, acting under authority of law, state educational, reformatory and penal institutions, and other legal outstanding indebtedness of like nature, and that during said years it was deemed necessary by the governor to call out the national guards of the state for the purpose of suppressing insurrection and defending the state, thereby causing large expenditures, and increased indebtedness, with no fund or revenue to meet the same.

Legislation. Sec. 2691. Act 1895 p. 178 § 1, entitled:

AN ACT

To Provide for the Funding of One Hundred Seventy-five Thousand Dollars (\$175,000) of the Indebtedness of the State of Colorado, One Hundred Thousand Dollars of Which is to Provide for Casual Deficiency of Revenue, and Seventy-five Thousand Dollars to Meet Expenses Incurred in Suppressing Insurrection, and Appropriating Money Out of the General Revenue Fund to Pay the First Year's Interest on the Same.

CITATIONS.

This act held constitutional. *Contracting of State Debt*, In re, 21 C. 400, 41 P. 1111. *Casual Deficiency*, In re, 21 C. 404, 42 P. 670.

This and the act of 1895 page 26, construed together in determining the intent of the appropriation of the latter act as to certain salaries payable out of the deficiency fund.—*Parks v. Hays*, 11 A. 418, 53 P. 894.

2692. Bond issue—Denomination—Interest—Maturity.

SEC. 2. The governor, the treasurer and the secretary of state of Colorado are hereby authorized to issue the coupon bonds of the state of Colorado in the sum of one hundred and seventy-five thousand (175,000) dollars, or so much thereof as may be necessary, as hereinafter set forth; one hundred thousand dollars of said bonds, being for the payment of the deficits resulting from said casual deficiency of revenues for the years 1893 and 1894, and seventy-five thousand dollars being for the payment of expenses incurred in suppressing insurrection; the said bonds to be issued in denominations as follows: One hundred shall be of the denomination of one thousand (1,000) dollars each, and seven hundred and fifty of the denomination of one hundred (100) dollars each, and to be numbered from one to eight hundred and fifty, both inclusive; said bonds shall bear interest at a rate to

be determined by the governor, not to exceed four per centum per annum, the interest to be evidenced by coupons attached to said bonds, payable semi-annually at the office of the state treasurer, at the city of Denver, Colorado, or at such banking house in the city of New York as the governor may designate. The principal of said bonds shall be due and payable in fifteen years from the date of their issue, at the office of the state treasurer of Colorado. Said bonds shall be registered in the office of the auditor of state, and his certificate of such registry, attested by the seal of his office, affixed to each bond, shall be evidence of their legal issue.

Legislation. Sec. 2692. Act 1895 § 2, cited under § 2691.

2693. Series 1895—Form of bond—Registered.

SEC. 3. The bonds issued under this act shall be known as "Funding Bonds, Series 1895," and shall be signed by the governor, countersigned by the state treasurer, and attested by the secretary of state, who will affix the great seal of the state to each bond. They shall be numbered and registered in a book kept for that purpose by the state treasurer, in the order in which they are issued. Each bond shall state upon its face the amount for which it is issued, to whom issued, for what purpose issued, naming the full amount for casual deficiency fund, and the amount for insurrection fund, the date of its issue, and the title of this act, together with the section and article of the constitution authorizing this act; and the title and text of this act shall be printed upon the reverse side of each of said bonds. Only so many of said bonds shall be issued as may be necessary to pay the outstanding bills and certificates mentioned herein.

[For form of bonds see also section 2697.]

Legislation. Sec. 2693. Act 1895 § 3, cited under § 2691.

2694. Tax Levy—Sinking fund.

SEC. 4. Whenever the bonds are issued as provided in this act, it shall be the duty of the state board of equalization, to levy and assess a special tax on all taxable property in this state sufficient in amount to meet the semi-annual interest accruing on said bonds, which tax when collected, shall be paid into the state

treasury to the credit of the interest fund, which shall be divided by the state treasurer in proper proportion between the casual deficiency fund and the insurrection fund; and for the ultimate redemption of said bonds, there shall be levied annually for five years after nine years from the date of their issue, such tax upon all the taxable property of the state as shall create an annual fund equal to twenty per cent. of the whole amount of the bonds issued, which fund shall be called the "Funding Bonds Series 1895," sinking fund, and which shall also be divided by the treasurer in proportion between the "Casual Deficiency Fund," and the "Insurrection Fund." All taxes for interest on, and for the redemption of such bonds, shall be levied and collected as other state taxes, and shall be paid into the state treasury in cash only; the proceeds thereof shall be kept by the state treasurer, as special and distinct funds under their respective heads, to be used in payment of interest on and redemption of said bonds, or for their purchase as hereinafter provided, and for no other purpose whatever; *Provided*, That whenever any surplus remains to the credit of the interest fund, after the full payment of the interest maturing in any year, the state treasurer shall cause such surplus to be transferred to the credit of the "Funding Bond Series 1895, Sinking Fund;" all moneys belonging to the said sinking fund may be invested by the state treasurer in any of the said bonds issued under this act.

Legislation. Sec. 2694. Act 1895 § 4, cited under § 2691.

2695. Payment of interest.

SEC. 5. The state treasurer is hereby authorized and directed to pay the interest for the year 1897 and subsequent year on the "Casual Deficiency Bonds" and the "Insurrection Bonds" of the years 1895 and 1896, out of any moneys in the treasury to the credit of the "Interest on Deposit Fund" when such interest shall become due.

Legislation. Sec. 2695. Act 1897 p. 136 § 1, entitled:

AN ACT

To Authorize the State Treasurer to Pay the Interest on the Casual Deficiency and Insurrection Bonds Out of the Interest on Deposit Fund.

2696. Treasurer's report—Cancellation of bonds.

SEC. 6. The treasurer shall include in his biennial report a statement of the interest collected in pursuance of this act, the amount paid on the "Casual Deficiency Funded Debt," and the amount paid on the "Insurrection Funded Debt;" also the amount, if any, carried to the sinking fund, and how invested. When any of the bonds are purchased under this act or redeemed, it shall be the duty of the treasurer to cancel the same so that they can be plainly identified, and cause the record of such cancellation to be made in the registry books of both the state treasurer and state auditor, and they shall be kept on file in the state treasurer's office; and any such purchases or cancellations shall also appear in said biennial statement of the treasurer.

Legislation. Sec. 2696. Act 1895 p. 178 § 5, cited under § 2691.

2697. Form of bonds—Bonds, how sold.

SEC. 7. The governor and attorney general are authorized to prescribe the form of the bonds to be issued under this act, and the coupons attached thereto, subject to the provisions contained in section 2 of this act; and when said issue is made as herein provided, the treasurer shall be authorized to dispose of the same for cash at not less than par, and deposit the proceeds thereof in the treasury to the credit of the "Funding Bonds Series 1895," fund, and dividing said fund in proportion between the casual deficiency fund and the insurrection fund as herein provided, to be used respectively in the payment of the outstanding indebtedness mentioned in section 1 of this act, resultant from said casual deficiency of revenue, and the expenses of suppressing said insurrection which may have been, or may hereafter be audited by the governor, attorney general and state auditor, as outstanding bills and certificates of indebtedness of the fiscal years 1893 and 1894.

[Section 1 referred to is section 2691.]

[Section 2 referred to is section 2692.]

Legislation. Sec. 2697. Act 1895 § 7, cited under § 2691.

2698. Act irrevocable.

SEC. 8. This act shall not be revised, amended or repealed

until the total amount of indebtedness herein provided for is wholly paid and discharged.

Legislation. Sec. 2698. Act 1895 § 8, cited under § 2691.

II. SERIES OF 1897.

Section.

2699. Bond issue—Denomination—Interest—Maturity.

2700. Series of 1897—Form of bond.

2701. Tax levy—Sinking fund—Interest.

2702. Treasurer's report—Cancellation of bonds.

2703. Payment of interest.

2704. Form of bonds—Bonds, how sold.

2705. Registry book.

2706. Act irrevocable.

2699. Bond issue—Denomination—Interest—Maturity.

SEC. 9. The governor, the treasurer and the secretary of state of Colorado, are hereby authorized to issue the registered coupon funding bonds of the state of Colorado, in the sum not exceeding two hundred and twenty-five thousand (225,000) dollars, or so much thereof as may be necessary as hereinafter set forth in exchange for the indebtedness incurred during the years 1896 and 1897 in suppressing insurrection and protecting the state; the said bonds to be issued in the denomination of one thousand (1,000) dollars each, and be numbered from one to two hundred and twenty-five both inclusive; said bonds shall bear interest at a rate to be determined by the governor, not to exceed four per cent. per annum, the interest to be evidenced by coupons attached to said bonds, payable semi-annually at the office of the state treasurer, at the city of Denver, Colorado, or at such banking house in the city of New York as the governor may designate. The principal of said bonds shall be due and payable in twenty-five years from the date of their issue, and said bonds shall be payable in 15 years from the date of their issue at the option of the state of Colorado; and said option may be exercised by giving ninety days' notice published in a newspaper of general circulation in the city of Denver, Colorado, and by personal notice to

counterfeiting, in any other state or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offense alleged against him, it shall be the duty of the judge or justice to commit him to the jail of the said county, or if the offense is bailable according to the laws of this state, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next district court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceedings to the executive of this state, so soon thereafter as may be. If, in the opinion of the executive of this state, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made, the executive of this state shall forthwith issue his warrant under the seal of the state, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this state. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the state, and to surrender him agreeably to said warrant.

Legislation. Sec. 2684. G. S. § 1536. G. L. § 1277. Act 1861 § 4, cited under § 2681. R. S. p. 342 § 4.

2685. Appearances of party bailed—Discharge.

SEC. 5. In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the

said recognizance, or continue it according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

Legislation. Sec. 2685. G. S. § 1537. G. L. § 1278. Act 1861 § 5, cited under § 2681. R. S. p. 342 § 5.

2686. Forfeiture of recognizance.

SEC. 6. If the recognizance shall be forfeited, it shall inure to the benefit of the state.

Legislation. Sec. 2686. G. S. § 1538. G. L. § 1279. Act 1861 § 6, cited under § 2681. R. S. p. 343 § 6.

2687. Security for costs—Default — Fee-bill — Execution — Fees.

SEC. 7. In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has

any such purchases, payments or cancellations shall also appear in said biennial statement of the state treasurer, during the fiscal year of 1897.

Legislation. Sec. 2702. Act 1897 § 4, cited under § 2699.

2703. Payment of interest.

SEC. 13. For the payment of the coupons representing the interest to accrue due on said bonds issued under this act, the state treasurer is hereby authorized and directed to apply any money at that time in his hands and unappropriated belonging to the general revenue fund; and so much money as may be necessary therefor is hereby appropriated out of said funds for the payment of said interest.

Legislation. Sec. 2703. Act 1897 § 5, cited under § 2699.

2704. Form of bonds—Bonds how sold.

SEC. 14. The governor and attorney general are authorized to approve the form of the bonds to be issued under this act, and the coupons attached thereto, subject to the provisions contained in section 1 of this act; and when said issue is made as herein provided, the treasurer shall be authorized to dispose of the same for cash at not less than par and deposit the proceeds thereof in the treasury to the credit of the "Registered Funding Bonds, Series 1897 Fund," to be used in the payment of the outstanding indebtedness mentioned in this act, resultant from the expenses of suppressing said insurrection of 1896 and 1897, which may have been, or may hereafter, be audited by the governor, attorney general, and state auditor, as outstanding bills and certificates of indebtedness of the fiscal years of 1896 and 1897.

[Section 1 referred to is section 2699.]

Legislation. Sec. 2704. Act 1897 § 6, cited under § 2699.

2705. Registry book.

SEC. 15. The book provided for in section 2 of this act, for the registry of said bonds by the state treasurer, shall also provide for the record of the name or names of the person or persons.

corporation or corporations, to whom said bond or bonds is or are issued, and of the transferee or transferees to whom the same may have been transferred; and such bonds, and the interest thereon, shall be payable only to the registered owner or owners, holder or holders of the said bond or bonds, as shown by said book of registry, or to their representatives, executors, administrators or assigns.

[Section 2 referred to is section 2700.]

Legislation. Sec. 2705. Act 1897 § 7, cited under § 2699.

2706. Act irrepealable.

SEC. 16. This act shall not be revised, amended or repealed, until the total amount of indebtedness herein provided for is wholly paid and discharged.

Legislation. Sec. 2706. Act 1897 § 8, cited under § 2699.

III. SERIES OF 1907.

Section.

2707. Bond issue—Denomination—Interest—Maturity.

2708. Series 1907—Register—Form of bond.

2709. Tax levy for sinking fund.

2710. Treasurer's report—Cancellation of bonds.

2711. Interest, how paid.

2712. Form of bonds—Bonds, how sold.

2713. Auditing board.

2714. Act not to be revised or repealed.

2707. Bond issue—Denomination—Interest—Maturity.

SEC. 17. The governor, the treasurer, and the secretary of the state of Colorado are hereby authorized and instructed to issue the negotiable coupon bonds of the state of Colorado in the sum of nine hundred thousand dollars, or so much thereof as may be necessary as hereinafter set forth for the purpose of paying the expenses incurred in suppressing the insurrection and defending the state during the years 1899, 1903 and 1904, the said bonds to be issued in denominations of one thousand (1,000) dollars each, to be numbered from one (1) to nine hundred, both in-

clusive, said bonds shall bear interest at the rate of three (3) per centum per annum. The interest to be evidenced by coupons attached to such bonds, payable semi-annually at the office of the state treasurer of the state of Colorado, or at such banking house in the city of New York as the governor may designate. The principal of said bonds shall be due and payable in twenty (20) years from the date of their issue at the office of the state treasurer of the state of Colorado. The bonds shall be registered in the office of the auditor of state, and his certificate of such registry, attested by the seal of his office attached to each bond, shall be evidence of their legal issue.

Legislation. Sec. 2707. Act 1907 p. 411 § 1, entitled:

AN ACT

To Provide for the Funding of the Indebtedness of the State of Colorado Incurred in Suppressing Insurrection During the Years 1899, 1903 and 1904.

2708. Series 1907—Register—Form of bond.

SEC. 18. Bonds issued under this act shall be known as "Funding Bonds, Series 1907," and shall be signed by the governor, countersigned by the state treasurer, and attested by the secretary of state, who shall affix the great seal of the state to each bond; the coupons attached to such bonds shall bear the lithographed signature of the state treasurer. The bonds shall be entered and registered in a book kept for that purpose by the state treasurer in the order in which they are issued. All bonds shall be negotiable in form, payable to bearer, and each bond shall state upon its face the amount for which it is issued, for what purpose issued, the date of its issue, and the title of this act, together with the section and article of the constitution authorizing this act, and the title and text of this act shall be printed upon the reverse side of each bond. Only so many of said bonds shall be issued as may be necessary to pay the outstanding indebtedness mentioned herein, together with the interest which may have accrued upon such indebtedness.

[Constitution, article 2, section 4, authorizes the issuance of funding bonds.]

[For form of bonds see also section 2712.]

Legislation. Sec. 2708. Act 1907 § 2, cited under § 2707.

2709. Tax levy for sinking fund redemption.

SEC. 19. Whenever the bonds are issued as provided in this act it shall be the duty of the state board of equalization to levy and assess a special tax upon all taxable property of this state sufficient in amount to meet the semi-annual interest accruing upon said bonds, which tax when collected shall be paid into the state treasury to the credit of the interest fund. And for the ultimate redemption of said bonds there shall be levied annually for five years after fourteen years from the date of their issue such tax upon the taxable property of the state as to create an annual fund equal to twenty (20) per cent. of the whole amount of the bonds, which fund shall be called "Funding Bond Series 1907 Sinking Fund." All taxes for interest and for the redemption of such bonds shall be levied and collected as other state taxes, and shall be paid into the state treasury in cash only, the proceeds thereof shall be kept by the state treasurer as a special and distinct fund to be used in the payment of interest on and redemption of said bonds, or for their purchase, as hereinafter provided, and for no other purpose whatever; *Provided*, That whenever a surplus remains to the credit of the interest fund after the full payment of the interest maturing in any year, the state treasurer shall cause such surplus to be transferred to the credit of the "Funding Bond Series 1907 Sinking Fund." All money belonging to the said sinking fund so accruing shall be used by the state treasurer in the purchase or payment of any bonds issued under this act.

Legislation. Sec. 2709. Act 1907 § 3, cited under § 2707.

2710. Treasurer's report—Cancellation of bonds.

SEC. 20. The treasurer shall include in his biennial report a statement of the taxes collected in pursuance of this act, the amount paid; also, the amount, if any, carried in the sinking fund, and how invested. When any of the bonds are purchased under this act, it shall be the duty of the treasurer to cancel the same so that they can be plainly identified, and cause a record of such cancellation to be made in the registry books of both the state treasurer and state auditor, and they shall be kept on file in the state treasurer's office, and any such purchase and can-

cellation shall also appear in said biennial statement of the treasurer.

Legislation. Sec. 2710. Act 1907 § 4, cited under § 2707.

2711. Interest, how paid.

SEC. 21. For the payment of the coupons representing the first year's interest on the bonds issued under this act, the state treasurer is hereby authorized and directed to apply any money at that time in his hands belonging to the general revenue fund or the fund accruing from interest on bank deposits or from either or both of said funds, and so much money as may be necessary therefor is hereby appropriated out of said funds for the payment of said interest.

Legislation. Sec. 2711. Act 1907 § 5, cited under § 2707.

2712. Form of bond—Bonds, how sold.

SEC. 22. The governor and attorney general are authorized to prescribe the form of the bonds to be issued under this act and the coupons attached thereto, subject to the provisions contained in sections one (1) and two (2) of this act, and when said issue is made as herein provided, the treasurer is authorized to dispose of the same for cash at not less than par and accrued interest, and deposit the proceeds thereof in the treasury to the credit of the "Funding Bond Series 1907 Sinking Fund," said fund to be used in the payment at face value and accrued interest of the outstanding indebtedness hereinbefore referred to resulting from the expense of suppressing said insurrection, and which have heretofore been properly audited.

[Section 1 referred to is section 2707.]

[Section 2 referred to is section 2708.]

Legislation. Sec. 2712. Act 1907 § 6, cited under § 2707.

2713. Auditing board.

SEC. 23. That no account, warrant, certificate, or other evidence of indebtedness shall be funded or paid under the provisions of this act, until the same shall be audited and allowed by an auditing board, and the governor, the secretary of state, auditor

of state, state treasurer and the attorney general is hereby constituted such auditing board. And such auditing board is authorized and directed to examine all original accounts and vouchers and determine whether the same are a proper charge against the state of Colorado, and to refuse to allow the same if in the judgment of such board they are not such proper charge.

Legislation. Sec. 2713. Act 1907 § 7, cited under § 2707.

2714. Act not to be revised or repealed.

SEC. 24. This act shall not be revised, amended or repealed until the total amount of indebtedness herein provided for is wholly paid and discharged.

Legislation. Sec. 2714. Act 1907 § 8, cited under § 2707.

IV. SERIES OF 1909.

Section.

- 2714-A. Insurrection expenses—Bond issue.
- 2714-B. Series 1909—Bonds negotiable.
- 2714-C. Payment of interest and principal.
- 2714-D. Report of state treasurer.
- 2714-E. First year's interest.
- 2714-F. Form of bonds—How sold.
- 2714-G. Indebtedness to be audited by board.
- 2714-H. Repeal not allowed.

Preamble—Whereas, It appears that during the year 1909, 1903 and 1904 it was deemed necessary by the governor of this state, under and by virtue of the authority vested in him, to call out the national guard of the state for the purpose of suppressing insurrection and defending the state, thereby causing large expenditures and an increased indebtedness, with no funds or revenues to meet the same; therefore,

Be it Enacted by the General Assembly of the State of Colorado:

2714-A. Insurrection expenses—Bond issue.

SEC. 24a. The governor, the treasurer and the secretary of the state of Colorado are hereby authorized and instructed to issue

the negotiable coupon bonds of the state of Colorado in the sum of nine hundred and fifty thousand dollars (\$950,000.00), or so much thereof as may be necessary, as hereinafter set forth, for the purpose of paying the expenses incurred in suppressing the insurrection and defending the state during the years 1899, 1903 and 1904. Said bonds shall be issued in denominations of one hundred dollars (\$100.00) each, or any multiple thereof; shall be numbered consecutively beginning with number one (1) and shall bear interest at the rate of three (3) per cent. per annum, the interest to be evidenced by coupons attached to said bonds, payable semi-annually at the office of the state treasurer of the state of Colorado, or at such banking house in the city of New York as the governor may designate. The principal of said bonds shall be due and payable in twenty years from the date of their issue at the office of the state treasurer of the state of Colorado. Said bonds shall be registered in the office of the auditor of state, and his certificate of such registry, attested by the seal of his office attached to each bond, shall be evidence of their legal issue.

Legislation. Sec. 2714A. Act 1909 p. 418 § 1, entitled:

AN ACT

To Provide for the Funding of the Indebtedness of the State of Colorado Incurred in Suppressing Insurrection During the Years 1899, 1903 and 1904.

2714-B. Series 1909—Bonds negotiable.

SEC. 24b. The bonds issued under this act shall be known as "funding bond, series 1909," and shall be signed by the governor and countersigned by the state treasurer, and attested by the secretary of state, who shall affix the great seal of the state to each bond. The coupons attached to said bonds shall bear the lithographed signature of the state treasurer. Said bonds shall be entered and registered in a book kept for that purpose by the state treasurer, in the order in which the same are issued. All bonds shall be negotiable in form and payable to bearer, and each bond shall state upon its face the amount for which it is issued, for what purpose issued, the date of its issue and the title of this act, together with the section and article of the constitution authorizing this act, and the title and text of this act shall be printed upon the reverse side of each bond. Only so many of said bonds shall

be issued as may be necessary to pay the outstanding indebtedness mentioned herein, together with the interest which may have accrued upon said indebtedness.

Legislation. Sec. 2714B. Act 1909 § 2, cited under § 2714A.

2714-C. Payment of interest and principal.

SEC. 24c. Whenever said bonds are issued as provided in this act, it shall be the duty of the state board of equalization to levy and assess a special tax upon all taxable property of this state sufficient in amount to meet the semi-annual interest accrued upon said bonds, which tax when collected shall be paid into the state treasury to the credit of the interest fund. And for the ultimate redemption of said bonds there shall be levied annually for five years after fourteen years from the date of their issue such tax upon the taxable property of the state as to create an annual fund equal to twenty (20) per cent. of the whole amount of said bonds, which fund shall be called "funding bond, series 1909 sinking fund." All taxes for interest and for the redemption of said bonds shall be levied and collected as other state taxes, and shall be paid into the state treasury in cash only. The proceeds thereof shall be kept by the state treasurer as a special and distinct fund to be used in the payment of the interest on and the redemption of said bonds, or for their purchase, as hereinafter provided, and for no other purpose whatever; *Provided*, That whenever a surplus remains to the credit of the interest fund after the full payment of the interest maturing in any year, the state treasurer shall cause such surplus to be transferred to the credit of said "funding bond, series 1909 sinking fund." All moneys belonging to said sinking fund so accruing shall be used by the state treasurer in the purchase or payment of any bonds issued under this act.

Legislation. Sec. 2714C. Act 1909 § 3, cited under § 2714A.

2714-D. Report of state treasurer.

SEC. 24d. The treasurer shall include in his biennial report a statement of the taxes collected in pursuance of this act, the amount paid and the amount, if any, carried into the sinking fund, and how invested. When any of the said bonds are purchased under this act it shall be the duty of the treasurer to cancel the

same so that they can be plainly identified, and to cause a record of such cancellation to be made in the registry books of both the state treasurer and the state auditor, and the bonds so cancelled shall be kept on file in the state treasurer's office. Any such purchase and cancellation shall also appear in the biennial statement of the treasurer.

Legislation. Sec. 2714D. Act 1909 § 4, cited under § 2714A.

2714-E. First years' interest.

SEC. 24e. For the payment of coupons representing the first year's interest on the bonds issued under this act the state treasurer is hereby authorized and directed to apply any money at that time in his hands belonging to the general revenue fund, or the fund accruing from interest on bank deposits, or from either or both of said funds, and so much money as may be necessary therefor is hereby appropriated out of said funds for the payment of said interest.

Legislation. Sec. 2714E. Act 1909 § 5, cited under § 2714A.

2714-F. Form of bonds—How sold.

SEC. 24f. The governor and attorney general are hereby authorized to prescribe the form of the bonds to be issued under this act and of the coupons attached thereto, subject to the foregoing provisions of this act; and when said issue of bonds is made as herein provided, the treasurer is hereby authorized to exchange said bonds, or as many thereof as may be necessary, at par and accrued interest, for the warrants or other evidences of indebtedness issued in paying the expenses mentioned in section 1 of this act, at par and accrued interest, upon surrender of an equal amount of said warrants or other evidences of indebtedness for cancellation, in which case the holders of any of the said warrants or other evidences of indebtedness may pay into the state treasury any sums of money less than one hundred dollars (\$100.00) each necessary to pay for the bonds so delivered to them respectively.

Or the treasurer may after advertisement sell and dispose of all or any of the said bonds for cash at not less than par and accrued interest, and deposit the proceeds thereof in the treasury to

the credit of the said "funding bond series 1909 sinking fund," said fund or so much thereof as may be necessary to be used by him in the payment at their face value and accrued interest of the said warrants or other evidences of indebtedness which have been properly audited.

Legislation. Sec. 2714F. Act 1909 § 6, cited under § 2714A.

2714-G. Indebtedness to be audited by board.

SEC. 24g. No account, warrant, certificate or other evidence of indebtedness shall be funded or paid under the provisions of this act unless the same shall be audited and allowed by an auditing board, and the governor, the secretary of state, auditor of state, state treasurer and attorney general are hereby constituted such auditing board. *Provided*, That an audit may be required of any accounts, warrants, certificates or other evidences of indebtedness which have heretofore been audited and approved by the like auditing board created under an act approved April 9, 1907.

And as to any such accounts, warrants, certificates or other evidences of indebtedness not heretofore audited by said board, the auditing board hereby created is authorized and directed to examine and determine whether the same are a proper charge against the state of Colorado, and to refuse to allow the same if in the judgment of such board the same are not such a proper charge.

Legislation. Sec. 2714G. Act 1909 § 7, cited under § 2714A.

2714-H. Repeal not allowed.

SEC. 24h. This act shall not be revised, amended or repealed until the whole amount of indebtedness herein provided for is wholly paid and discharged.

Legislation. Sec. 2714H. Act 1909 § 8, cited under § 2714A.

Sec. 9 was the General Repealing Clause.

Act of 1909, p. 315, submitted constitutional amendment to Art. XI, Sec. 3, concerning funded indebtedness. See appendix in Vol. 5.

CHAPTER LVII.

FUNDS.

Section.

- 2715. General fund.
 - 2716. Moneys to be transferred to general fund.
 - 2717. Surplus fund.
 - 2718. Transfer to surplus fund.
 - 2719. Appropriation for state institutions.
 - 2720. Fund controlled by board.
 - 2721. Board pass on claims—Audit and allow.
 - 2722. Claims presented to auditor—Order of payment.
 - 2723. Transfer to capital building fund.
 - 2724. Faith of state pledged to repay loan.
 - 2724-A. Treasurer custodian of all state funds.
 - 2724-B. Institutions to deposit with state treasurer.
 - 2724-C. Reports to state auditor.
 - 2724-D. Funds not credited to the general revenue.
 - 2724-E. Reserve as to state university.
 - 2724-F. Receipt books.
 - 2724-G. Punishment for failure to transmit.
 - 2724-H. City and county officers.
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2715. General fund.

SECTION 1. That all sums of money remaining to the credit of appropriations, after all bills have been paid, that fact being certified to by the board, or person having charge of the expenditure of such appropriation, shall be, by the auditor and treasurer, charged back to the general fund.

Legislation. Sec. 2715. Act 1885 p. 241 § 1, entitled:

AN ACT

In Relation to the Unexpended Balances on Appropriations and Moneys Received by State Treasurer, Other Than That Set Aside by Law for a Specified Purpose.

2716. Moneys to be transferred to general fund.

SEC. 2. That all sums of money received by the state treasurer, from the sales of laws and code; fees from secretary of state, or fees from any department of state, from the Colorado land and mineral association, from the fish commissioners on account of sale of fish, and all fines received for violating fish laws, from fees received by the state board of medical examiners, from the sale of furniture and other articles; also, the unexpended balance of the insurance department fund now in the hands of said treasurer, or hereafter to be collected, after deducting the expenses of the department; said unexpended balance of the insurance department, to be transferred to the general fund of the state on or before the 30th day of November of each year; or from any other source whereby the same is not set aside by law for a specified purpose, shall, on its receipt, be credited to the general state fund by the auditor and treasurer.

[For state fair fund see section 2514.]

[For supreme court library fund. Sections 234-237 and 1430.]

[Unexpended fees of board of accountancy transferred to general fund Section 4938.]

Legislation. Sec. 2716. Act 1885 § 2, cited under § 2715.

2717. Surplus fund.

SEC. 3. There is hereby created a fund to be known as the "Surplus Fund" of the state of Colorado, to consist of the surplus from the revenues of the state at the end of each biennial period, after the payment of all the appropriations made therefrom during such biennial period.

Legislation. Sec. 2717. Act 1903 p. 103 § 1, entitled:

AN ACT

To Create a Surplus Fund and to Make Appropriations Therefrom.

2718. Transfer to surplus fund.

SEC. 4. The treasurer of state and auditor of state are hereby empowered and instructed to transfer to the surplus fund, as provided by section one (1) of this act, all surplus or excess revenues for the biennial periods for the years 1901 and 1902, and 1903 and 1904, and from each and all funds derived from any

fees, penalties or taxes collected and paid to the state treasurer, after the payment of the appropriations for each biennial period.

[Section 1 referred to is section 2717.]

Legislation. Sec. 2718. Act 1903 § 2, cited under § 2717.

2719. Appropriation for state institutions.

SEC. 5. There is hereby appropriated out of said "Surplus Fund" created by sections one (1) and two (2) of this act, the sum of three hundred thousand (300,000) dollars, or so much thereof as may be necessary for the payment of the deficiencies, as evidenced by outstanding certificates of indebtedness, issued pursuant to an order made by the governor of Colorado on the 17th day of November, A. D. 1899, for the maintenance and support of the various state penal, educational and charitable institutions, and the interest thereon; and for the payment of all the outstanding vouchers and other evidences of indebtedness issued for the support and maintenance of the state penitentiary, the reformatory, the insane asylum, the state industrial school for boys and the soldiers' and sailors' home and for the state university, and interest on all such evidences of indebtedness from the date of issue of them, at six per cent. (6) per annum, all of which indebtedness so evidenced was created in, for and during the fiscal years 1897-1898, 1899-1900.

[Section 1 referred to is section 2717.]

[Section 2 referred to is section 2718.]

Legislation. Sec. 2719. Act 1903 § 3, cited under § 2717.

2720. Fund controlled by board.

SEC. 6. The said surplus fund shall be under the direction and control of a board, consisting of the governor, auditor of state and the attorney general, for the purpose of approving the items of indebtedness to be allowed and paid under the provisions of this act, and they are hereby empowered and authorized to allow and order the payment of said indebtedness as fast as the money comes into said fund with which to pay the same: the auditor of state shall draw his warrant or warrants for the items of indebtedness as they are approved, as herein required, said

warrants to be payable only out of said surplus fund, and said warrants shall be issued only to the amount of money in said fund at the time of issue of said warrants.

Legislation. Sec. 2720. Act 1903 § 4, cited under § 2717.

2721. Board pass on claims—Audit and allow.

SEC. 7. In the auditing and allowance of such evidence of indebtedness, said board shall pass upon the validity of all claims constituting the same, and shall audit and allow the same in the order of their seniority, starting with those evidences of indebtedness issued during the fiscal year 1897, and following this mode through the entire four years, as fast as there is any money in said surplus fund, the auditor shall so audit such evidences of indebtedness allowed by said board, and shall issue warrants therefor in the order herein provided.

Legislation. Sec. 2721. Act 1903 § 5, cited under § 2717.

2722. Claims presented to auditor—Order of payment.

SEC. 8. It shall be the duty of the holders of the evidences of indebtedness, the payment of which is provided for in this act, within sixty (60) days after the approval of this act, to present and file with the auditor of state their claims against said surplus fund. In case any person or persons owning any of the same shall not so file such claim or claims, their seniority as to payment shall be rated thereafter as from the date when the same are so filed, and such claims shall not be allowed ahead of any claims which have been allowed, the owners of which have complied with the provisions of this act.

Legislation. Sec. 2722. Act 1903 § 6, cited under § 2717.

2723. Transfer to capitol building fund.

SEC. 9. There shall be transferred from the internal improvement permanent fund to the capitol building fund for the use and benefit thereof the sum of one hundred and fifty thousand dollars.

Legislation. Sec. 2723. Act 1891 p. 53 § 1, entitled:

AN ACT

For the Transfer and Loan of One Hundred and Fifty Thousand Dollars from the Internal Improvement Permanent Fund to the Capitol Building Fund.

2724. Faith of state pledged to repay loan.

SEC. 10. The state treasurer is hereby required to make the transfer on the books of his office, made necessary in section one of this act and in such a manner that the capitol building fund shall stand charged as a debtor to the internal improvement permanent fund as money loaned from that fund to capitol building fund and the faith of this state is hereby pledged to repay to the internal improvement permanent fund the full amount so loaned with interest thereon at the rate of three and one-half per cent. per annum from the date of said transfer to the return thereof. The state treasurer shall also in writing notify the state auditor of such transfer who shall also make the proper transfer and entry upon the books of his office.

Legislation. Sec. 2724. Act 1891 § 2, cited under § 2723.
Sec. 1 above referred to is § 2723.

See also:

Agricultural college fund § 115.

Alien deportation fund § 123.

Blind and mute fund § 4330.

Bounty fund § 425, 6364.

Bureau of mines fund § 4260.

County fee funds § 2554.

Estray fund and brand inspection fund § 6417.

Game fund § 2731.

Gauging fund § 3333.

Insurance fund § 3103.

Land commissioners' cash fund § 5172.

Land title registration fund § 799.

Military fund § 4457.

Normal institute fund § 5996.

Normal school fund § 6128.

Public library fund § 3972.

School fund § 5887-5906.

School of mines fund § 6025.

State fair fund § 2514.

University fund § 6952.

2724-A. Treasurer custodian of all state funds.

SEC. 10a. The state treasurer is hereby designated as the custodian of all moneys belonging to the state of Colorado or to any institution, bureau, or department or public office of the state. All appropriations heretofore or hereafter made shall be withdrawn from the hands of the state treasurer only as the expenditures authorized by such appropriations are incurred and the payments thereon become due; and no withdrawal of funds from the treasury shall be lawful or permitted in any instance for the purpose of depositing such moneys in banks or with other private or public trustees.

The provisions of this act shall apply, but not exclusively, to all appropriations made for maintenance of or construction for, state institutions, whether continuing or biennial, or in any other form, and whether in the form of special mill levies, or as appropriations from the general funds, or from any special or limited funds, and shall apply to appropriations from the internal improvement fund.

All expenditures from funds in the hands of the state treasurer as custodian or otherwise, shall be withdrawn only upon the issuance of vouchers certified or approved by the person, persons, officer or institution having control and direction of such fund, and by warrants drawn against such funds in accordance therewith by the state auditor.

Legislation. Sec. 2724-A. Sec. 1 of Act of 1911, S. B. No. 459, entitled:

AN ACT

Concerning Public Funds Belonging to the State or Any Institution, Department, Bureau or Officer Thereof, Providing for the Custody, Management, Receipting, Withdrawal and Reporting of the Same, and for Penalties for the Violation of the Provisions Contained Therein. (Approved June 4, 1911.)

2724-B. Institutions to deposit with state treasurer.

SEC. 10b. The several educational, charitable and penal institutions of the state, which derive money from tuition fees, contributions, or the sale of products, or from any other source, and

the several departments and officers of the state who derive or receive moneys from fees, taxes, sales, penalties, licenses, permits, or other sources, are hereafter required to deposit such funds with the state treasurer as custodian thereof. The various cash, fee and other funds above described shall be drawn upon and diminished by the officers having authority so to do, only by vouchers and warrants as above described. It shall be the duty of every department and officer receiving any public moneys whose office shall be in the state capitol building, to deposit such funds daily in the office of the state treasurer, who shall receipt therefor, and such deposit shall be made to accord with the regulations of the public examiner. Every other officer, department and institution shall deposit monthly with the custodian, and in such form, and on such day as may be prescribed by the regulations of the public examiner. *Provided, however,* That items of postage, express, telegrams and similar incidental expenses may be paid by any state institution and a voucher drawn monthly at the end of each month to cover the total amount of such expenses for such month and the auditor shall draw his warrant on the state treasurer for the amount of such vouchers when properly approved. *Provided,* That a sum of not exceeding one thousand dollars (\$1,000) may be kept with the local treasurer of each state educational, charitable or penal institution for emergencies; said sum shall be subject to the order of the board of control of the institution to which said fund belongs.

Legislation. Sec. 2724-B. Sec. 2 of Act of 1911, cited under § 2724-A.

2724-C. Reports to state auditor.

SEC. 10c. It shall be the duty of every public officer, department and institution which is authorized by law to receive money from sources other than appropriation from the revenues of the state, to report to the state auditor in such form as the public examiner may prescribe, and on such date as he may prescribe, in the first week in each month following the date set for the transmission of such funds to the state treasurer. Such report shall be made under oath and shall state fully the sources and amounts of all moneys received during the period by the report.

Legislation. Sec. 2724-C. Sec. 3 of Act of 1911, cited under § 2724-A.

2724-D. Funds not credited to the general revenue.

SEC. 10d. Funds lodged with the state treasurer under this act which are not creditable to the general revenue of the state, and which have been or may be by law designated for purposes other than such general revenue, shall not be deposited in the treasury of the state, or considered therein, but shall be held by the state treasurer as custodian, separate and apart from such funds, and may be withdrawn from his custody for the purposes and under the control of the officers now or hereafter vested with authority so to do, subject, however, to the requirement of vouchers and warrants as above described.

Legislation. Sec. 2724-D. Sec. 4 of Act of 1911, cited under § 2724-A.

2724-E. Reserve as to state university.

SEC. 10e. Nothing in this act shall be construed to deprive the regents of the University of Colorado of the exclusive control and direction of all funds and appropriations to the university, and this act is intended only to provide for the safe custody and proper preservation of the said funds. The unconstitutionality of any provision or provisions of this act as applied to any fund or funds, or to any officer, department or institution, shall be construed to render inoperative only the provisions as applied to such funds, officers, department or institution, and the unconstitutionality of any single provision or provisions herein shall not render the other provisions inoperative. the various requirements being declared separable.

Legislation. Sec. 2724-E. Sec. 5 of Act of 1911, cited under § 2724-A.

2724-F. Receipt books.

SEC. 10f. Every public officer, bureau, department or institution of the state which receives or may be entitled to receive funds in the form of fees, tuition, licenses, taxes, penalties, sales, permits or moneys from any source other than appropriation from the treasury, or which is entitled to receive or does receive moneys in any form from the general public, shall maintain a receipt book, or if in any instance the public examiner shall expressly so authorize, two or more sets of receipt books, which shall be public documents. The receipts issued, or if the maintenance of two or

more sets of receipts is expressly authorized, the receipts of each set of receipt books shall be consecutively numbered in series, without duplication, gaps or repetition in any form whatsoever, except the single duplicate or stub retained by the issuer. For every sum of money whatsoever received by such public officer, bureau, department or institution, a receipt shall be issued in order of such payment, the number of which printed thereon, shall follow next after the last receipt issued, and no receipt shall be issued out of the order or sequence prescribed herein. The issuance of each receipt shall be accompanied by the preparation of a stub or duplicate similarly numbered and containing the same matters. Receipt forms which may be cancelled or spoiled shall in no case be substituted for, but shall be preserved with the stub and so designated as cancelled or spoiled, and the receipt form next in numerical order shall be issued instead.

Legislation. Sec. 2724-F. Sec. 6 of Act of 1911, cited under § 2724-A.

2724-G. Punishment for failure to transmit.

SEC. 10g. Failure to transmit or deposit moneys or funds as provided in this act, or failure to report as provided for herein, or the expenditure of any public fees or moneys except in the manner provided for herein, or wilful false statement under oath in any report required herein, or the violation of any of the provisions of this act, shall be deemed a misdemeanor, punishment by imprisonment for not to exceed one year and every member of a board or commission which may be in default shall be deemed individually liable if assenting thereto.

In addition thereto, any person or persons wilfully retaining public moneys beyond the period permitted by this act shall be liable to the people in a penalty of one per cent. thereof for each day in default, to be recovered in a civil action filed by the attorney general upon request of the state treasurer.

Legislation. Sec. 2724-G. Sec. 7 of Act of 1911, cited under § 2724-A.

2724-H. City and county officers.

SEC. 8. Nothing in this act shall affect the duties of any county treasurer or other county or city officer.

Legislation. Sec. 2724-H. Sec. 8 of Act of 1911, cited under § 2724-A. Sec. 9 was the Repealing Clause and § 10 was the Emergency Clause.

CHAPTER LVIII.

GAME AND FISH.

- I. DIVISION A. DEPARTMENT CREATED—COMMISSIONER AND WARDENS—POWERS AND DUTIES—OWNERSHIP OF GAME AND FISH—GENERAL PROVISIONS.—2725-2752.
- II. DIVISION B. GENERAL REGULATIONS—OPEN SEASONS—NUMBER—QUANTITY.—2753-2760.
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**I. DIVISION A. DEPARTMENT CREATED—COMMISSIONER AND
WARDENS—POWERS AND DUTIES—OWNERSHIP OF
GAME AND FISH—GENERAL PROVISIONS.**

Section.

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2744. Penalty for killing.
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2751. Commissioner notify warden of revocation of commission.
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2725. Game and fish commissioner—Appointment—Term—Salary—Deputy.

SECTION 1. The department of game and fish is hereby created, and immediately upon the passage of this act, and every four years thereafter, the governor shall, by and with the consent of the senate, appoint some person skilled in matters relating to

game and fish, to be game and fish commissioner, who shall be the head of the game and fish department, and shall take his office on the first day of April of each quadrennial period. The governor may at any time remove the commissioner for cause, and in vacation of the senate, may fill any vacancy in the office for the unexpired term, by appointment in writing, filed with the secretary of state.

The commissioner shall be a resident and citizen of this state, and shall hold his office for the term of four years, or until his successor shall be duly appointed and qualified. The commissioner shall receive a salary of two thousand (\$2,000) dollars per annum, together with his reasonable and necessary traveling expenses, not exceeding six hundred (\$600) dollars per annum, to be paid as the salary and expenses of other state officers; and such commissioner shall have the power to appoint a deputy state game and fish commissioner to receive a salary of fifteen hundred (\$1,500) dollars per annum, together with his reasonable and necessary traveling expenses, not exceeding four hundred and eighty (\$480) dollars per annum, to be paid as the salary and expenses of the commissioner are paid; and the commissioner may revoke such appointment at any time, and appoint a successor.

Legislation. Sec. 2725. § 1 of Act of 1911 H. B. No. 386, entitled:

AN ACT

To Amend Chapter LVIII, Revised Statutes of Colorado, 1908, and Section 3 of Chapter 167, Session Laws of 1909, in Relation to Game and Fish. (This Act was filed in the office of the Secretary of State on June 5, 1911, without the governor's approval.)

Substitute for Sec. 2725, which was § 1 of Act of 1907 p. 415, which substituted § 1 of Act of 1899 p. 184, which was entitled "An Act to Protect Game and Fish."

By each of the former Acts the officer mentioned was styled "State Game and Fish Commissioner." By the text he is styled "Game and Fish Commissioner," and his term is increased from 2 years to 4 years.

Sec. 9 was the repealing section and saving clause, and § 10 was the emergency clause.

CITATIONS.

The statute vests the ownership of game in the state as a proprietor and it can be appropriated to use or held in possession only as permitted by the statute.—*Hornbeke v. White*, 20 A. 13, 76 P. 926.

2726. Bond of commissioner.

SEC. 2. Before entering upon the duties of his office, the commissioner shall give a bond to the state of Colorado in the sum of \$5,000, for the faithful performance of such duties, with sureties to be approved by the auditor of state, the same to be filed with the secretary of state, and he shall also take and file an oath similar to that required of other state officers.

Legislation. Sec. 2726. § 2 Act 1899, cited under § 2725.
See notes to § 2654.

2727. Office of commissioner—Clerk.

SEC. 3. The commissioner shall be provided with an office at the state capitol, and with suitable furniture, stationery and other facilities for the transaction of the business of his department; he may appoint a clerk at a salary not exceeding fifteen hundred (\$1,500.00) dollars per annum, and may at any time remove said clerk and appoint a successor.

Legislation. Sec. 2727 § 2 of Act of 1911, cited under § 2725. Substitute for § 2727, which was § 3 of Act of 1899, p. 185. The only change is to raise the salary from \$1,000 to \$1,500.

2728. Game wardens—Salary—Special wardens—Disposition of fees.

SEC. 4. The commissioner may in writing, by and with the approval of the governor, appoint and keep in service not more than five chief game wardens, who shall be residents and citizens of this state, such appointments to be filed with the state auditor.

Each chief game warden shall receive a salary of twelve hundred (\$1,200.00) dollars per annum and his reasonable and necessary traveling expenses, not exceeding four hundred and eighty (\$480.00) dollars per annum.

If deemed necessary for the proper enforcement of this act the commissioner may, with the approval of the governor, appoint deputy game wardens for a limited time, and not exceeding twenty in number at any one time, at a compensation not exceeding at the rate of one hundred (\$100.00) dollars per month each, while actually engaged in duty, and his reasonable and necessary travel-

ing expenses, not exceeding three hundred (\$300.00) dollars per annum, which shall be in full for services and ordinary expenses; *Provided*. That in no event shall the deputies and special wardens so appointed, or any of them exercise the powers of a deputy sheriff, except for the purpose of enforcing the provisions of this act.

The commissioner may also appoint, by and with the approval of the governor, special game wardens to serve without pay, who shall have the same powers as deputy wardens. The commissioner may revoke the commission of any warden, and appoint his successor at pleasure, by and with the approval of the governor.

All moneys received from fees and licenses of all kinds, as provided by this act, shall be deposited by the commissioner in the state treasury in a fund to be known as the "Game Cash Fund" and may be used by the commissioner for the purpose of employing additional game wardens, as above provided, and also for the propagation and protection of the fish and game as provided in section 2749 of this division, and the auditor of state, by and with the approval of the governor, shall upon presentation of vouchers properly drawn and signed by the commissioner, issue warrant or warrants upon the state treasury, payable out of the game cash fund, for the purposes mentioned, but in no event shall the auditor draw a warrant or warrants payable from the game cash fund unless there shall be money in said fund to pay such warrant or warrants. All moneys so deposited in the game cash fund as herein provided, shall remain in said fund to be used for the purposes herein set forth, and shall not be deposited in or be transferred to the general fund of the state of Colorado, or any other fund.

Each commissioner shall have the power to use the moneys remaining in said fund from the last previous biennial period, existing at the time of his appointment, for the purposes expressed in this act.

Legislation. Sec. 2728. § 3 of Act of 1911, cited under § 2725. Substitute for § 2728, which was § 1 of Act of 1903 p. 230, which amended § 4 of Act of 1899 p. 185 § 4.

The Act of 1897 p. 37 § 4 now R. S. § 2646, was the first to provide for game wardens. It called for "Three forest and game wardens." Act 1899 p. 185 § 4 called for "five chief game wardens." The 1903 Act called for the same number as does the text of Act of 1911.

2728-A. U. S. forest officers to be game and fire wardens.

SEC. 4a. The governor may, at his discretion, appoint forest officers of the United States to act without pay as game wardens in enforcing the game and fish laws of this state and as fire wardens in enforcing the laws of this state as to forest fires, who shall have power to incur necessary expenses to extinguish forest fires. Such forest officers shall hold their positions as game and fire wardens during the pleasure of the governor.

Legislation. Sec. 2728A. Act 1909 p. 394 § 1, entitled:

AN ACT

Concerning the Appointment of Forest Officers of the United States as Game and Fire Wardens of Colorado.

2729. Superintendent of fish hatcheries—Salary—Assistants.

SEC. 5. The commissioner may also, by writing filed in the office of the secretary of state, appoint a superintendent of state fish hatcheries, who shall be skilled in fish culture, and who shall hold the office for the term of four years, subject to the power of the commissioner to remove him at any time, and to appoint a successor in like manner. The superintendent shall receive a salary of fifteen hundred (\$1,500.00) dollars per annum, and his reasonable and necessary traveling expenses, not exceeding five hundred (\$500.00) dollars per annum.

The commissioner may also appoint an assistant at each of the operative fish hatcheries of the state, at a salary of twelve hundred (\$1,200.00) dollars per annum each.

[The following fish hatcheries have been established from time to time. Douglas County Hatchery, L. '93, p. 272; La Plata County Hatchery, L. '93, p. 273; Grand County Hatchery, L. '99, p. 68; Routt County Hatchery, L. '01, p. 184; Del Norte Hatchery, L. '05, p. 233; Glenwood Hatchery, L. '05, p. 234; Grand County Hatchery, L. '05, p. 235. The La Plata County Hatchery was removed to Durango, L. '03, p. 56; and later an appropriation was made for the erection of a residence for the superintendent. L. '05, p. 232. The Twin Lakes Hatchery was abandoned. L. '97, p. 35.]

Legislation. Sec. 2729. § 4 of Act of 1911, cited under § 2725. Substitute for § 2729, which was § 6 of Act of 1899, also cited under § 2725.

2730. Commissioner prescribe rules.

SEC. 6. The commissioner shall have power to prescribe such

rules, regulations and forms as may be required to carry out the true intent of this act, and not inconsistent herewith.

Legislation. Sec. 2730. Act 1899 § 7, cited under § 2725.

2731. Game fund—Application—Deficiency.

SEC. 7. Except as herein otherwise specially provided, all moneys received under this act by a warden shall be paid over to the commissioner. Those received by the commissioner shall be paid over monthly to the state treasurer, and those received by the state treasurer, from whatever source, under the provisions hereof, shall constitute a game fund, and be used exclusively for the payment of the salaries and expenses incurred as provided herein, and in the event such fund shall at any time prove insufficient, the deficiency shall be paid out of any moneys in the state treasury, in the same manner as those of other state officers, and such appropriations shall be made as may be necessary therefor. Payments of salaries and expenses shall be made monthly upon verified accounts in detail, approved by the commissioner and governor, and warrants drawn by the auditor of state.

Legislation. Sec. 2731. Act 1899 § 8, cited under § 2725.

2732. Duty of commissioner and wardens.

SEC. 8. It shall be the duty of the commissioner and chief wardens to devote their entire time to the performance of the duties specified in this act, and to cause prosecutions to be instituted and conducted for the punishment of violations thereof. In the performance of their duties the commissioner and wardens shall have all the rights and powers, throughout the state, of sheriffs and constables in their respective counties, except as herein otherwise provided.

Legislation. Sec. 2732. Act 1899 § 9, cited under § 2725.

2733. Biennial report of commissioner.

SEC. 9. The commissioner shall biennially make to the governor a report of the transactions of his department which shall contain an account of the work done, of moneys expended and

recommendations for future work, the cost of said report not to exceed \$200.

Legislation. Sec. 2733. Act 1899 § 10, cited under § 2725.

2734. Officers shall enforce act—Search and seizure.

SEC. 10. The commissioner and every warden throughout the state, and every sheriff and constable in his respective county, is authorized and required to enforce this act and seize any game or fish taken or held in violation of this act, and he shall have full power and authority, and it shall be the duty of every such officer, with or without a warrant, to arrest any person whom he has reason to believe guilty of a violation thereof; and with or without a warrant, to open, enter and examine all camps, wagons, cars, stages, tents, packs, warehouses, stores, outhouses, stables, barns, and other places, boxes, barrels, and packages where he has reason to believe any game or fish taken or held in violation of this act, is to be found, and to seize the same; *Provided*, That a dwelling house actually occupied can be entered for examination only in pursuance of a warrant.

Legislation. Sec. 2734. Act 1899 § 11, cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbecke v. White*, 20 A. 15, 26, 76 P. 927.

2735. Officers may use vehicle of offender for conveyance.

SEC. 11. Where game or fish while being transported, is seized under this act, the officer making such seizure shall have authority, upon payment of reasonable compensation therefor, to also take possession of and use any animals and vehicles used in such transportation for the purpose of conveying the game or fish seized to a convenient railroad station or place of safe keeping or sale, and also for conveying any person arrested for the unlawful possession of such game or fish to a place of hearing or trial, and no liability shall attach to such officer by reason thereof, but this section shall not apply to any animal or vehicle while being

used as a public conveyance for passengers or mails, or to any railroad car.

Legislation. Sec. 2735. Act 1899 § 12, cited under § 2725.

2736. Commissioner may call assistance to enforce act.

SEC. 12. In case Indians or other persons shall engage in the hunting or killing of game or fish in violation of this act, in such number as to be beyond the reasonable power of the commissioner or any chief warden to control, or in case of forcible resistance to the enforcement thereof, it shall be the duty of the sheriff of the county in which such violation exists, upon demand of the commissioner or any chief warden, to aid him in the enforcement of this act, and to call to his assistance at once a sufficient number of persons to enforce the same, promptly and effectually, or, if by him deemed necessary, said commissioner or chief warden may, call such assistance without the intervention of the sheriff. The failure without good cause, of any person called to assist in such enforcement, to respond and render such assistance shall be deemed a violation of this act.

Legislation. Sec. 2736. Act 1899 § 13, cited under § 2725.

2737. Fires—Camp fires—Restricted.

SEC. 13. No person shall set fire to any timber or grass on land belonging to this state or to the United States, or set fire in any place where it is liable to spread to such timber or grass, nor leave any camp fire unextinguished, and every officer having authority in relation to timber or timber reserves of the United States shall have the same authority under this act as a deputy warden.

[See also sections 1227, 1877 and 2652.]

Legislation. Sec. 2737. Act 1899 § 14, cited under § 2725.

2738. Commissioner may bring action for possession or value of game or fish—Costs.

SEC. 14. The commissioner may, if he so elect, bring and maintain a civil action in the name of the people of the state for

the possession of any game or fish taken, killed or held in violation of this act, or for the value thereof, against any person in possession or exercising control over the same, and if required by the commissioner, a writ of replevin shall issue therein without bond. No previous demand for possession shall be necessary. In case costs or damages are adjudged in favor of the defendant, the same shall be paid out of the game fund. Neither the pendency of such action nor of a criminal prosecution for the same taking, killing or possession, shall be a bar to the other, nor shall anything in this section affect the right of seizure under the other provisions of this act.

. **Legislation.** Sec. 2738. Act 1899 § 15, cited under § 2725.

CITATIONS.

In an action of replevin for deer hides by the commissioner the burden is upon the defendant to allege and prove his right to possession.—*Peo. v. Johnson*, 38 C. 77, 88 P. 184. *Hornbeke v. White*, 20 A. 15, 76 P. 927.

2739. Game and fish property of state.

SEC. 15. All game and fish now or hereafter within this state not held by private ownership, legally acquired, and which for the purposes of this act shall include all the quadrupeds, birds and fish mentioned in this act, are hereby declared to be the property of the state, and no right, title, interest or property therein can be acquired or transferred, or possession thereof had or maintained except as herein expressly provided.

Legislation. Sec. 2739. Act 1899 § 16, cited under § 2725.

CITATIONS.

The ownership of game is in the state as a proprietor.—*Hornbeke v. White*, 20 A. 15, 76 P. 927.

2740. Stock in hatchery not to be sold.

SEC. 16. No fish, fry or ova which may be in any of said hatcheries shall be sold or disposed of; *Provided*, That the superintendent of state fish hatcheries shall not be prevented by the

above provision from exchanging either fish, fry or ova with any other hatchery.

Legislation. Sec. 2740. Act 1897 p. 35 § 7, entitled:

AN ACT

Concerning the Fish Hatcheries of the State of Colorado.

All the other sections of the Act were temporary, except § 5 which provided for the abandonment of the Twin Lakes hatchery.

2741. Importation of capercailzie and black game.

SEC. 17. There is hereby appropriated out of any money in the treasury of the state, not otherwise appropriated, the sum of two thousand (2,000) dollars for the purpose of purchasing, importing and breeding in the state of Colorado, the capercailzie and the black game.

Legislation. Sec. 2741. Act 1907 p. 127 § 1, entitled:

AN ACT

To Provide for the Importation Into the State of Colorado of the Following Named Game Birds of the Grouse Family, To-wit: The Capercailzie and Black Game, and Making An Appropriation Therefor.

2742. Commissioner import and distribute.

SEC. 18. It shall be the duty of the fish and game commissioner to purchase and import said birds and select the location in the state where they are to be liberated and also to provide for their protection against illegal shooting, killing, snaring or capturing of said birds.

Legislation. Sec. 2742. Act 1907 § 2, cited under § 2741.

2743. Close season.

SEC. 19. It shall be prohibited and absolutely forbidden to shoot, kill, snare or in any manner molest or capture said birds for five years from the date of their liberation within the confines of the state of Colorado.

[For open seasons in general see section 2759.]

Legislation. Sec. 2743. Act 1907 § 3, cited under § 2741.

2744. Penalty for killing.

SEC. 20. Any person violating the foregoing section 3 shall be fined in the sum of one hundred (100) dollars for each bird killed, destroyed or captured by such person.

[Section 3 above referred to is section 2743.]

Legislation. Sec. 2744. Act 1907 § 4, cited under § 2741.

2745. Auditor draw warrant.

SEC. 21. The state auditor is hereby authorized to draw warrants against said appropriation upon vouchers presented by the game and fish commissioner and approved by the governor.

Legislation. Sec. 2745. Act 1907 § 5, cited under § 2741.

2746. Game and fish defined.

SEC. 22. As used in this act, and unless otherwise specifically restricted or enlarged, the word game includes all the quadrupeds and birds, and the word fish includes all the fish (except white salmon, suckers, carp and squaw fish) mentioned herein, and not or hereafter within this state and not held by private ownership, legally acquired.

Legislation. Sec. 2746. Act 1899 § 17, cited under § 2725.

2747. Definition of terms.

SEC. 23. As used in this act, unless otherwise specifically restricted or enlarged, the words herein and hereof refer to the whole act; the words person, owner, proprietor, grantee, lessee or licensee include a firm, association, corporation or municipality; the word commissioner means the state game and fish commissioner; the word warden or wardens includes the chief wardens, deputy wardens and special wardens provided for herein; the word officer includes every person authorized to enforce this act; and whenever the possession, use, importation, transportation, storage, taxidermy, sale, offering or exposing for sale of game or fish is prohibited or restricted, the prohibition and restriction shall, where not specifically otherwise provided, extend to and include every part of such game or fish, and a violation

as to each individual animal or part thereof shall be a separate offense, and two or more offenses may be charged in the same complaint, information or indictment, and proof as to a part of an animal shall be sufficient to sustain a charge as to the whole of it; and violations as to any number of animals of the same kind may be charged in the same count and punished as a separate offense as to each animal.

Legislation. Sec. 2747. Act 1899 § 18, cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 15, 26, 76 P. 927.

2748. When possession evidence of wrongful taking.

SEC. 24. The possession at any time of game or fish unaccompanied by a proper and valid license, certificate, permit, or invoice, as herein provided, shall be prima facie evidence that such game or fish was unlawfully taken and is unlawfully held in possession, and it shall be the duty of every person having the possession or control of game or fish to produce the proper license, certificate, permit or invoice, when one is required by this act, on demand of any officer, and to permit the same to be inspected and copied by him.

Legislation. Sec. 2748. Act 1899 § 19, cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 15, 26, 76 P. 927.

2749. Exchange and purchase of stock—Limitations—Rain-bow trout—Special licenses.

SEC. 25. The commissioner may take, or authorize the taking from any of the waters of this state at any time, in any manner, by competent assistants skilled in such work, and avoiding in every way possible injury to the fish so taken from the public waters for such purpose, any fish or spawn belonging to the state for the purpose of propagating or stocking other waters in this state, or exchanging with the fish commissioners of other states of the United States, but no such fish or spawn shall be taken or used for propa-

gation in or stocking of any private lake, nor shall anything herein prohibit the purchase, by the commissioner of fish fry and eggs for stocking waters in this state, but no fry or eggs of fish destructive of trout shall be placed in public waters without the consent of the commissioner. All spawn of rainbow trout taken from any stream of this state, for use in the state fish hatcheries, shall be hatched and fed and nursed at such hatcheries for at least three months, when not less than fifty (50) per cent. of the fry resulting from such hatching and feeding shall be returned to the stream from which the original spawn was taken. The commissioner may also use the fish and game cash fund for the purchase of fish, fish fry, fish eggs, game quadrupeds and game birds of any kind, deemed suitable by him for propagation within this state, and shall distribute the same in such manner as may be deemed by him most effectual to promote such propagation. He may also, with the approval of the governor, lease from owners of licensed lakes the right to take spawn from such lakes for the purpose of supplying the hatcheries of the state.

The commissioner may also authorize the retention of, by any resident of the state of any young game animal which has been abandoned by its mother and taken in good faith for the purpose of saving its life; but no more than two animals shall be retained by one person at the same time.

The commissioner, with the written permission of the governor, may also at any time and in any manner take game running at large within the state, for the purpose of propagation in other parts of the state, but the same shall not be used for stocking any private park.

Legislation. Sec. 2749. § 2 of Act of 1909 p. 384. Substitute for § 2749, which was Act of 1903 p. 231 § 2, amending Act of 1899 p. 190 § 20.

2750. Violation of act by corporation—Warrant.

SEC. 26. In case of a violation of this act by a corporation, the warrant of arrest may be read to the president, secretary or manager in this state, or any general or local agent thereof in the county where the action is pending, and upon the return of such warrant so served, the corporation shall be deemed in court and subject to the jurisdiction thereof, and any fine imposed may be

collected by execution against the property of such corporation, but this section shall not be deemed to exempt any agent or employee from prosecution.

Legislation. Sec. 2750. Act 1899 § 21, cited under § 2725.

2751. Commissioner notify warden of revocation of commission.

SEC. 27. In case the commissioner shall revoke the commission of a warden he shall immediately notify him in writing, and it shall be the duty of the person whose commission is revoked immediately on receipt of such notice to mail such commission to the commissioner at Denver, and to refrain thereafter from acting or assuming to act as a warden.

Legislation. Sec. 2751. Act 1899 § 22, cited under § 2725.

2752. Revocation of license certificate or permit.

SEC. 28. If the holder of any license, certificate or permit shall persistently or flagrantly and knowingly violate or countenance the violation of any provision of this act, such license, certificate or permit shall be revoked by the commissioner after due notice given of the alleged violation and an opportunity afforded to appear and show cause against the same.

Legislation. Sec. 2752. Act 1899 § 23, cited under § 2725.

II. DIVISION B. GENERAL REGULATIONS—OPEN SEASONS— NUMBER—QUANTITY.

Section.

2753. List of game protected—When game to be fed.

2754. Shooting from public highway and on private property.

2755. Possession of carcass.

2756. When fish must be killed.

2757. Unlawful to bait with game or fish—Destruction of bird nest.

2758. Dynamiting fish and floating logs, prohibited.

2759. Open season on game.

2759-A. Open season for trout and grayling.

2759-B. Beaver.

2759-C. Limitation on amount of game or fish.

2759-D. Length of time game may be kept.

2759-E. Manner of taking—Dogs, blinds, etc.

2760. Suckers, carp and squaw fish.

2753. List of game protected—When game to be fed.

SEC. 29. No person shall at any time of the year, or in any manner, pursue, take, wound or kill any bison, buffalo, elk, deer, antelope, mountain sheep, or beaver, or any of the following wild birds, viz:

Turkey, prairie chicken, sage chicken, grouse, quail, pheasant, partridge, ptarmigan, duck, goose, brant, swan, crane, water fowl, pigeon, dove, snipe, or curlew, or any trout, white fish, grayling, sunfish, bass, wall-eyed pike or other food fish, or sell, offer or expose for sale or have the same in possession, except as permitted by this act. Whenever it shall become necessary by reason of snow or other failure of their natural food supply to feed any of the animals mentioned in section one of this act in order to prevent them from suffering, it shall be the duty of the state fish and game commissioner to provide them with such food as may be necessary to be paid for out of the fees of his office, with the approval of the governor and the auditor shall issue his warrant for the same.

Legislation. Sec. 2753. Act of 1909 p. 385. Substitute for § 2753, which was § 1 of Act of 1899 p. 191.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 16, 26, 76 P. 927.

2754. Shooting from public highway and on private property.

SEC. 30. No person shall shoot from a public highway at game, or fish or hunt game in any enclosure not public land without the consent of the owner or persons in charge of the same, nor fish or hunt in any park, lake or preserve licensed under this act without the consent of the proprietor or person in charge of the same, and no question of ownership, proprietorship, or charge, shall defeat a prosecution unless it appears that the accused in good faith has heretofore claimed and at the time of the commission of the act complained of, claimed to be such owner, proprietor or to have such charge, or to have had the consent of the owner, proprietor or person in charge, and shall establish such claim.

Legislation. Sec. 2754. Act of 1909 p. 386. Substitute for § 2754, which was § 2 of Act of 1899 p. 191.

CITATIONS.

This section cited in holding that the act of 1903, giving the right to fish within private property, was unconstitutional. —*Hartman v. Tresise*, 36 C. 155, 84 P. 688.

2755. Possession of carcass.

SEC. 31. No person shall have in possession or in transport the carcass of any game quadruped or any considerable portion of such carcass unless the same has thereon the natural evidence of its sex sufficient to enable such sex to be readily determined by ordinary inspection.

Legislation. Sec. 2755. Act of 1909 p. 386. Substitute for § 2755, which was Act of 1899 p. 191 § 3.

2756. When fish must be killed.

SEC. 32. Every person lawfully taking any fish alive and desiring and entitled lawfully to retain the same, shall immediately kill it, unless it is intended to be kept alive, in which case it shall be immediately placed in a suitable receptacle containing sufficient water and given proper care and attention.

Legislation. Sec. 2756. Act of 1909 p. 386. Substitute for § 2756, which was § 4 of Act of 1899 p. 191.

2757. Unlawful to bait with game or fish—Destruction of bird nest.

SEC. 33. No game or fish shall be used for baiting any trap, device or deadfall, nor shall any edible portion of game or fish be abandoned or permitted to go to waste, nor shall the nest of eggs of any game bird be wilfully disturbed, destroyed or held in possession.

Legislation. Sec. 2757. Act of 1909 p. 386. Substitute for § 2757, which was Act of 1899 p. 192 § 5.

2758. Dynamiting fish and floating logs, prohibited.

SEC. 34. No dynamite or other explosive or poisonous or stupefying substance whatever shall be used in the taking or kill-

ing of any fish, nor placed in any waters containing fish, except when done by public authority for public improvement, nor shall any ties or timber be driven or floated down any stream containing fish.

[See also sections 1817 and 6458.]

LEGISLATION. Sec. 2758. Act 1909 p. 386. Substitute for § 2758, which was Act 1899 § 6, cited under § 2725.

CITATIONS.

The provisions of this section referred to in dissenting opinion.—*Hartman v. Trestise*, 36 C. 165, 84 P. 692.

2759. Open season on game.

SEC. 35. It shall be lawful to pursue, take or kill, during the open season therefor, in the manner, of the kind, for the purpose and to the number and extent in this division provided, the following game and fish, and the open season therefor in each year shall begin and end as hereinafter provided, both dates inclusive, namely:

First—For deer having horns, October 1 to October 6, inclusive.

Second—For male mountain sheep having horns, September 25 to September 30, commencing in 1924.

Third—For male antelope having horns, September 25 to September 30, commencing in 1924.

Fourth—For elk having horns, November 1 to November 5, commencing in 1924.

Fifth—For prairie chickens, mountain and willow grouse, August 15 to October 10.

Sixth—For sage chickens, August 1 to September 1.

Seventh—For pheasants, capercaillies, black game, and other grouse not indigenous to this state, September 1 to September 20, commencing in 1915.

Eighth—For ducks, geese, brants, swans, cranes, plovers, curlews, snipes and other wading, marsh and shore birds and water fowls, October 1 to March 1 of the following year.

Ninth—For doves, an open season from August 1 to Sep-

tember 1, except at altitudes of 7,000 feet or over it shall be July 10 to August 10.

Tenth—For bob-white quail, October 1 to October 20, commencing in 1924.

Eleventh—For crested quail, October 15 to October 30, commencing in 1924.

Legislation. Sec. 2759. § 5 of Act of 1911, cited under § 2725. Substitute for § 2759, Act of 1909 p. 386, which was itself a substitute for R. S. § 2759, which was Act of 1907 p. 417; amending Act of 1905 p. 239 § 1, which amended Act of 1903 p. 231, which amended said Act of 1899 p. 192, § 7.

CITATIONS.

That part of subdivision 7 of the Act of 1903, giving the right to fish in any stream stocked at public expense, was unconstitutional.—*Hartman v. Tresise*, 36 C. 148, 153, 84 P. 688. (Dissenting opinion 166.)

Subdivisions 1, 8 and 9 cited in a replevin action involving certain deer hides.—*Hornbeke v. White*, 20 A. 16, 76 P. 927.

2759-A. Open season for trout and grayling.

SEC. 35a. The open season in running streams for trout and grayling, not less than seven inches in length, shall begin May 25 and end October 31, next ensuing, and the open season for trout and grayling, in lakes, shall begin May 1 and end October 31, next ensuing, and in no instance shall fishing be done between the hours of ten o'clock p. m. and four o'clock a. m.

The open season for whitefish, bass, catfish and walleyed pike shall be March 1st, to November 30th.

Legislation. Sec. 2759-A. An unnumbered section of said Act of 1911, cited under § 2725. Substitute for § 2759-A, which was Act of 1909 p. 387.

The 7th paragraph of R. S. p. 2759 before its substitution made the open season for trout from June 1 to November 30.

2759-B. Beaver.

SEC. 35b. Beavers which interfere with the maintenance or operation of any canal, ditch or lawful dam, or the cultivation of land, or injure timber, may be killed at any time in pursuance of written permission from the commissioner first obtained, under

such regulations as he may provide as to the disposition of the skins.

Legislation. Sec. 2759-B. Act of 1909 p. 387.

The text was covered in part by the proviso to § 2753 as printed in the revision of 1908.

2759-C. Limitation on amount of game or fish.

SEC. 35c. The right given by this division is limited to food purposes, and to 20 birds of each of the kinds mentioned in this act, the killing of which is permitted by the provisions hereof, but no person shall kill more than 20 birds in the aggregate of all kinds in any one calendar day, nor have in his possession more than 30 birds in the aggregate of all kinds at any one time; and the right herein given to take fish is limited to 20 pounds in any one calendar day, but no person shall have in his possession more than 25 pounds of fish at any time; nor shall any person take, kill or have in his possession in any one open season more than one game quadruped of the same kind; nor shall any person under twelve years of age be entitled to hunt except on his own premises or those of a relative or guardian, or take, kill or have in possession more than half the number of birds, or half the weight of fish, as hereinbefore provided.

Legislation. Sec. 2759-C. An unnumbered section of Act of 1911. cited under § 2725. Substitute for § 2759-C, Act of 1909 p. 388.

2759-D. Length of time game may be kept.

SEC. 35d. No game or fish shall be held in possession by any person for more than five days after the close of the season for killing the same, except as in this act otherwise provided.

Legislation. Sec. 2759-D. Act of 1909 p. 388.

2759-E. Manner of taking—Dogs, blinds, etc.

SEC. 35e. No game shall be pursued, taken, wounded or killed in the night, nor with a steel or hard pointed bullet, nor with any weapon other than ordinary shoulder gun or pistol; nor shall any fish be taken or killed except in the ordinary manner with a line and rod held in the hand, and the hook or hooks baited with natural

or artificial bait; and fishing with snag hooks or trot lines, or lines having more than five hooks thereon shall not be deemed the ordinary manner of fishing; nor shall any person fish within 200 feet of any fish-way, nor dispose of to another, except by actual donation, any game or fish taken or killed under the provisions of this division.

Provided, That dogs, blinds, sinks and decoys may be used for hunting birds, and that the provisions of this division in relation to game quadrupeds and fish shall not apply to those of parks and lakes licensed for the keeping and propagation of the same; nor to fishing for suckers, carp or squaw fish with snag hooks, hand or trot lines, nets or seines, in any streams at places where there are no trout, but every person using a net or seine must first obtain from the commissioner a permit, designating the place where the seine is to be used. Any fish other than suckers, carp or squaw fish so taken, must be immediately returned to the stream alive.

Legislation. Sec. 2759-E. An unnumbered section of Act of 1911, cited under § 2725. Substitute for § 2759-E, Act of 1909 p. 388.

CITATIONS.

That part of subdivision 7 of the act of 1903 giving the right to fish in any stream stocked at public expense, was unconstitutional.—*Hartman v. Tresise*, 36 C. 148, 153, 84 P. 688. (Dissenting opinion 166).

Subdivisions 1, 8 and 9 cited in a replevin action involving certain deer hides.—*Hornbeke v. White*, 20 A. 16, 76 P. 927.

2760. Suckers, carp and squaw fish.

SEC. 36. Such permits shall expire with the calendar year and shall be substantially in the following form:

FORM I.

State of Colorado.

Department of Game and Fish.

PERMIT FOR SUCKERS, CARP OR SQUAW FISH.

No. Denver 19....

Mr. is hereby authorized to take

suckers, carp or squaw fish from the.....at
.....from 19
to 19..... in conformity with
law.

This authorizes possession and sale, transportation and storage.
Void after the date last above

.....
Commissioner.

Legislation. Sec. 2760. Act of 1911, cited under § 2725. Substitute for Act of 1909, p. 389, which Act of 1909 was substitute for § 2760 of the revision of 1908, which was § 8 of Act of 1899 p. 193.

III. DIVISION C. PUBLIC AND PRIVATE PARKS, LAKES AND PRESERVES—SALE OF GAME AND FISH THEREFROM.

Section.

- 2761. License to retain possession of live game or fish.
- 2762. Park in violation of act deemed a public nuisance.
- 2763. When game or fish may be transported or sold.
- 2764. Lakes and parks to which act applies.
- 2765. Application for license to maintain park or lake.
- 2766. Form of license.
- 2767. Permit to increase collection—Public parks.
- 2768. Commissioner may grant license to exchange.
- 2769. Form of permit to capture or exchange—Duration.
- 2770. Commissioner entitled to 10 per cent. of increase of stock.
- 2771. Commissioner may strip fish.
- 2772. Game and fish received from increase, property of state.
- 2773. Shall not change flow of water.
- 2774. Game and fish in parks property of licensee—Restrictions.
- 2775. Permit to lessen number—Form.
- 2776. Proprietor furnish invoice of game or fish sold—Form.
- 2777. Duplicate invoice mailed commissioner, except.
- 2778. Attach invoice to package for shipment.
- 2779. Keep invoice attached until prepared for consummation.
- 2780. When copy of invoice given to buyer.
- 2781. Penalty for misstatement in invoices.
- 2782. Report of proprietor to commissioner.
- 2783. License of club to shoot on lake.

III. DIVISION C. PUBLIC AND PRIVATE PARKS, LAKES AND PRESERVES—SALE OF GAME AND FISH THEREFROM.*Continued.***Section.**

- 2784. Form of license.
 - 2785. Channels included, when—Use of screens.
 - 2786. Lessee entitled to license.
 - 2787. License given for a series of lakes.
 - 2788. When separate license for each interest required.
 - 2789. Notices against trespassing.
 - 2790. Transferee secure transfer of license.
 - 2791. Existing privileges pay, when.
 - 2792. Term of license—Renewal.
-

2761. License to retain possession of live game or fish.

SEC. 37. No person shall have in possession or keep or retain in captivity in any park, enclosure, lake or body of water, public or private, any living game or fish unless the person having such possession, or the proprietor of such park, enclosure, lake or body of water, shall procure a license therefor as hereinafter provided; and in any prosecution for a violation of this section the possession of any living game or fish, or the having or keeping of any such game or fish in any park, enclosure, lake or body of water shall be prima facie evidence that the same was unlawfully captured and is unlawfully held in possession.

Legislation. Sec. 2761. Act 1899 Division C. § 1, cited under § 2725.

2762. Park in violation of act deemed a public nuisance.

SEC. 38. Any park, enclosure, lake or body of water maintained in violation of this act shall be deemed a continuing public nuisance and may be abated as provided by law for the abatement of public nuisances and the game therein liberated, or any obstruction to the free ingress or egress of fish removed, and each day the same is maintained in violation hereof shall be a separate offense.

Legislation. Sec. 2762. Act 1899 Division C. § 2, cited under § 2725.

2763. When game or fish may be transported or sold.

SEC. 39. No person shall transport or sell, keep or expose or offer for transportation or sale any game or fish, taken from any park, enclosure, lake or body of water, public or private, unless the same is licensed as provided in this act, and then only as provided in this division, and this section shall apply to game and fish held by private ownership as well as to game and fish the ownership of which may be acquired under this act.

Legislation. Sec. 2763. Act 1899 Division C. § 3, cited under § 2725.

2764. Lakes and parks to which act applies.

SEC. 40. The provisions of this division in relation to private parks and lakes, the licensing thereof for the keeping and propagation of game and fish therein, and permitting the sale thereof, shall apply to every park or lake in whole or in part on land held by private ownership, and to every lake the water of which, or the right to the use of such water, in whole or in part, has been or may hereafter be acquired under the laws of this state or of the United States, for irrigation purposes, and the owner of such land or water right shall be deemed the proprietor of such park, or lake, and of the game or fish therein, and such lakes shall be designated as class A.

Legislation. Sec. 2764. Act 1899 Division C. § 4, cited under § 2725.

2765. Application for license to maintain park or lake.

SEC. 41. Any person having already established or desiring to establish and maintain a park or lake, public or private, for the purpose of keeping or propagating and selling the game or fish therein or to be placed therein, shall apply in writing to the commissioner, stating the name, location, extent and proprietorship of the same, the kind and as near as may be, the number of game or fish kept or desired to be kept therein, the term for which the license is desired, and enclosing the fee therefor, and if upon examination by the commissioner it shall appear that the application is in good faith, and in other respects proper and reasonable, he shall grant to such applicant a license therefor.

Legislation. Sec. 2765. Act 1899 Division C. § 5, cited under § 2725.

2766. Form of license.

SEC. 42. Such license shall be substantially in the following form:

Form 2.

State of Colorado.

Department of Game and Fish.

Licensed Parks and Lakes.

No., Class A.

Denver....., 189...

This certifies that....., proprietor of a (public or private) (park or lake) called....., and situated on Sec., Twp., Range, in..... County, Colorado, is hereby authorized to keep and propagate therein and dispose of as provided by law, the following (game quadrupeds, birds or fish), viz:.....together with such additions thereto (with the natural increase of all) as may be hereafter lawfully acquired. This authorizes possession, use and sale, but not transportation, and expires..... years after date.

.....,
Commissioner.

Legislation. Sec. 2766. Act 1899 Division C. § 6, cited under § 2725.

2767. Permit to increase collection—Public parks.

SEC. 43. When any such proprietor shall desire to procure or add to his collection game or fish belonging to the state, he shall apply to the commissioner, who, if it appear that the same is in good faith and proper and reasonable, shall issue a permit to procure the kind and number therein stated, which permit shall be sufficient to authorize the proprietor therein named or his agent appointed in writing, to capture or procure alive at any time of year such game and fish and to keep or dispose of them

and their natural increase subject to the provisions of this act, but no permit shall be valid except in the year of its date. *Provided*, That the use of such game or fish for any other purpose, or the injury or destruction of the same in the effort to capture or otherwise, shall be deemed a violation of this act, unless it is made to appear that the same occurred without the fault or negligence of any person engaged therein. *Provided, also*, That no fee for license or permit shall be charged for any park or lake owned or controlled by a municipality and to which the public is admitted free. Such parks and lakes shall be deemed public. All other parks and lakes licensed under this act shall be deemed private.

Legislation. Sec. 2767. Act 1899 Division C. § 7, cited under § 2725.

2768. Commissioner may grant license to exchange

SEC. 44. The commissioner may also grant a permit to any such proprietor for the exchange of any game or fish in such park or lake for other game or fish suitable for preservation or propagation in this state, with other persons within or without the state.

Legislation. Sec. 2768. Act 1899 Division C. § 8, cited under § 2725.

2769. Form of permit to capture or exchange—Duration.

SEC. 45. All permits for capture or exchange shall expire with the year in which issued and shall be substantially in the following form:

Form 3.

State of Colorado.

Department of Game and Fish.

Permit to Capture or Exchange.

No....., Class A.

Denver,....., 189....

This certifies that....., of....., is authorized in person or by his agent, authorized in writing, to capture alive at any time of year (or exchange for.....) the following game and fish to-wit:....., for the

purpose of propagation in licensed (park or lake) No. This authorizes possession and transportation to the licensed park or lake, but expires with the year of its date.

.....
Commissioner.

Legislation. Sec. 2769. Act 1899 Division C. § 9, cited under § 2725.

2770- Commissioner entitled to ten per cent. of increase of stock.

SEC. 46. Where a private park or lake of class A., licensed under the preceding sections contains game quadrupeds or fish belonging to the state, at the date of the license, the commissioner shall have the right to demand and receive from the proprietor, free of charge, at such park, not more than 10 per cent. of the natural increase of the game quadrupeds therein, for each year thereafter; and not more than 10 per cent. of the fertilized fish eggs stripped from the fish in such lake each year thereafter, and it shall be the duty of the proprietor to give reasonable notice to the commissioner of the time when such eggs will be ready for delivery. The commissioner shall secure, at his own expense and whenever he may elect, the game quadrupeds to which he is so entitled, but if he fail to do so before November 1st or fail to provide for the reception of the eggs to which he is entitled, his right thereto for that year shall cease.

Legislation. Sec. 2770. Act 1899 Division C. § 10, cited under § 2725.

2771. Commissioner may strip fish.

SEC. 47. If the proprietor of any lake mentioned in the last preceding section shall fail in any year to strip the fish therein, the commissioner shall have the right to do so, the same to be without expense to the proprietor.

Legislation. Sec. 2771. Act 1899 Division C. § 11, cited under § 2725.

2772. Game and fish received from increase, property of state.

SEC. 48. All game quadrupeds and fish eggs so obtained by

the commissioner from private parks and lakes shall belong to the state, and shall be used or sold by the commissioner for the purpose of stocking other parks, streams or lakes.

Legislation. Sec. 2772. Act 1899 Division C. § 12, cited under § 2725.

2773. Shall not change flow of water.

SEC. 49. No person owning or controlling any reservoir, lake or body of water into which public waters flow and which furnishes the water supply in whole or in part of any stream containing fish, shall divert or lessen such water inflow or supply to an extent detrimental to the fish in such stream, reservoir, lake or body of water.

Legislation. Sec. 2773. Act 1899 Division C. § 13, cited under § 2725.

2774. Game and fish in parks property of licensee—Restrictions.

SEC. 50. Except as in this division otherwise provided, all game and fish, with the natural increase thereof held or confined in any private park or lake of class A, licensed under the preceding sections, shall during the existence of the license or any renewal thereof, be deemed the property of the licensee of the same to the extent that he may lawfully retain, pursue, capture, kill, use, sell or dispose of the game and fish therein in any quantity, at any time of year, and in any manner except as prohibited in sections 4, 5, and 6 of division B of this act, by conforming to the conditions and subject to the restrictions in this division prescribed in relation thereto, but not otherwise, and the pursuit, capture, wounding or killing of any game or fish in any licensed park or lake, public or private, without the consent of the proprietor, shall be unlawful.

Provided. That the aggregate number of game or fish now in or hereafter collected and placed in any private park or lake of class A, which contained any game or fish belonging to the state at the date of the taking effect of this act shall not be lessened by the killing, use, sale or disposition thereof, except as provided in the next section, it being the purpose of this proviso

to restrict such killing, use, sale and disposition to a number not exceeding in the aggregate the natural increase, and that the right to capture, kill or dispose of birds in any park, shall, except as to pheasants and quails, placed therein by the proprietor, and their natural increase, when taken or killed within such park, be subject to the provisions of Division B hereof.

[Sections 4, 5 and 6 above referred to are sections 2756 to 2758. Division B referred to is found between sections 2753 and 2760.]

Legislation. Sec. 2774. Act 1899 Division C. § 14, cited under § 2725.

2775. Permit to lessen number—Form.

SEC. 51. If by reason of controlling necessity or for the purpose of stocking or replenishing some other park or lake, any proprietor of a park or lake of class A may desire to lessen the aggregate number above provided for, the commissioner may, on being satisfied of the propriety thereof, grant a permit therefor.

Such permit shall be substantially in the following form:

Form 4.

State of Colorado.

Department of Game and Fish.

No., Class A.

Denver,, 189....

Being satisfied of the propriety thereof, Mr., proprietor of, maintained under license No., is hereby permitted to lessen the aggregate number of therein to the extent of

This authorizes sale, but not transportation, and expires with the year of its date.

.....
Commissioner.

Legislation. Sec. 2775. Act 1899 Division C. § 15, cited under § 2725.

2776. Proprietor furnish invoice of game or fish sold—Form.

SEC. 52. When the proprietor of any licensed park or lake of class A shall sell or dispose of any game or fish as herein

provided, he shall at the same time deliver to the purchaser or donee or attach thereto an invoice signed by such proprietor or his agent, stating the number of the license and name of such park, or lake, the date of disposition, the kind, and as near as practicable the number and weight of such game or fish, the name and address of the purchaser, consignee or donee. Such invoice shall authorize transportation within this state, possession and use for thirty days after its date, and shall be substantially in the following form:

Form 5.

State of Colorado.
Department of Game and Fish.

Private Parks and Lakes—Invoice.

Name of Park or Lake.....Class A.

No. of License, Date,, 189.....

Kind and number of game and fish, weight of same,
..... lbs. Name of consignee,

Address of consignee, This authorizes
transportation within this state, possession and sale for thirty
days after date if attached to article.

.....
Proprietor.

By.....

Agent.

Legislation. Sec. 2776. Act 1899 Division C. § 16, cited under § 2725.

2777. Duplicate invoice mailed to commissioner, except.

SEC. 53. Such proprietor or his agent shall at the same time mail, postpaid, a duplicate of such invoice to the commissioner at Denver: *Provided*. That no invoice shall be required in case of fish lawfully taken or killed in such lake during the open season therefor, and within the quantity provided by division B, hereof,

while in the possession of the person capturing or killing the same during the open season and for five days thereafter.

[Division B referred to is found between sections 2753 and 2760.]

Legislation. Sec. 2777. Act 1899 Division C. § 17, cited under § 2725.

2778. Attach invoice to package for shipment.

SEC. 54. When any such game or fish, for which an invoice is required, is to be shipped by rail, express, or other carrier, public or private, the invoice shall be securely attached thereto or to the package containing the same, in plain sight, and the same may then be lawfully carried and delivered within this state to the consignee named in such invoice.

Legislation. Sec. 2778. Act 1899 Division C. § 18, cited under § 2725.

2779. Keep invoice attached until prepared for consumption.

SEC. 55. If such game or fish is held, exposed or offered for sale or sold by the consignee or kept in any storage, hotel, restaurant, cafe or boarding house, such invoice shall be kept attached thereto as aforesaid until the same shall have been prepared for consumption.

Legislation. Sec. 2779. Act 1899 Division C. § 19, cited under § 2725.

2780. When copy of invoice given to buyer.

SEC. 56. In case of a sale or disposition of a part of such game or fish the vendor shall at the same time make a copy of such invoice and indorse thereon the date of sale, the number and kind of game or fish so disposed of and the name of the purchaser, and sign and deliver the same to the purchaser or donee, who shall keep it attached as aforesaid until the game or fish is prepared for consumption, and the same shall have the same force and effect as the original invoice.

Legislation. Sec. 2780. Act 1899 Division C. § 20, cited under § 2725.

2781. Penalty for misstatement in invoice.

SEC. 57. Any wilful misstatement in or any omission of a

substantial requirement from any invoice or copy thereof, shall render the same void and be deemed a violation of this act, and the possession of such game or fish shall be unlawful, and the possession of any game or fish without such invoice or a copy thereof attached thereto when so, as above required shall be unlawful.

Legislation. Sec. 2781. Act 1899 Division C. § 21, cited under § 2725

2782. Report of proprietor to commissioner.

SEC. 58. The proprietor of every private park and lake licensed under the preceding sections shall, whenever required by the commissioner, make and send to the commissioner at Denver a report showing as near as practicable the kind, number, age and sex of the game, and the kind and number of the fish, added and disposed of during the year preceding and on hand at the date of the report.

Legislation. Sec. 2782. Act 1899 Division C. § 22, cited under § 2725.

2783. License of club to shoot on lake.

SEC. 59. No grantee or lessee of a bird-shooting privilege at or upon any lake or body of water, or any grantee or lessee of a fishing privilege in or upon any stream or any part thereof, shall pursue, take, wound or kill any bird at, upon or in such lake, or body of water, or fish in or upon such stream or permit the same, until he shall have procured a license therefor from the commissioner, and lakes and streams licensed under this section shall be designated as licensed preserves, but no such license shall be granted for any lake or body of water not wholly on land held by private ownership or under the laws relating to reservoirs or irrigation, nor for any part of a stream not wholly on land held by private ownership, nor shall any such licensee or other person pursue, take, wound or kill any bird at, upon or in any lake, body of water, nor fish in or upon any stream licensed under this section, or have in possession or dispose of game or fish from any preserve otherwise than as provided in division B of this act, nor

shall any person shoot or fish on a licensed preserve without the consent of the licensee.

[Division B referred to is found between sections 2753 and 2760.]

Legislation. Sec. 2783. Act 1899 Division C. § 23, cited under § 2725.

2784. Form of license.

SEC. 60. Licenses under the last preceding section may be obtained as near as may be in the manner provided for obtaining licenses for parks and lakes and shall be substantially in the following form:

Form 6.

State of Colorado.
Department of Game and Fish.

Licensed Preserves.

No. Denver, 189.

This certifies that, (grantee or lessee) of
....., situated on, section,
township, range, in
County, Colorado, is licensed to (shoot or fish) thereon or therein
and permit others to do so during the open season therefor and in
conformity with the law. This does not authorize transportation
or sale and expires years after date.

.....
Commissioner.

Legislation. Sec. 2784. Act 1899 Division C. § 24, cited under § 2725.

2785. Channels included, when—Use of screens.

SEC. 61. The rights acquired by the proprietor of a private lake licensed hereunder, and the prohibitions hereof, shall extend to and include all channels connecting a series or group of lakes under one license, and the commissioner may authorize the use of such screens or other appliances as may be necessary to prevent the fish in a licensed lake of class A. from escaping, and it shall

be the duty of the proprietor to adopt and use such screens or other appliances as the commissioner may direct to prevent the fish in public waters from entering such lake.

Legislation. Sec. 2785. Act 1899 Division C. § 25, cited under § 2725.

2786. Lessee entitled to license.

SEC. 62. When the owner of a private park or lake has granted or leased to another the right to keep and propagate game or fish therein, the grantee or lessee shall be deemed the proprietor and entitled to the license.

Legislation. Sec. 2786. Act 1899 Division C. § 26, cited under § 2725.

2787. License given for series of lakes.

SEC. 63. A series or group of lakes under one proprietorship or lease and situated in reasonable proximity to each other, may be included in one license, either as a private lake or licensed preserve.

Legislation. Sec. 2787. Act, 1899 Division C. § 27, cited under § 2725.

2788. When separate license for each interest required.

SEC. 64. In case of diverse proprietorship the license may be joint if the proprietors so elect, otherwise a separate license shall be required for each interest and the rights thereunder shall be co-extensive with or in proportion to such interest.

Legislation. Sec. 2788. Act 1899 Division C. § 28, cited under § 2725.

2789. Notices against trespassing.

SEC. 65. There shall be kept posted conspicuously and not more than forty rods apart on the borders of each park and each licensed stream preserve, plain notices not less than one foot square, stating that the same is private property and warning persons against trespassing thereon, and a similar notice shall be

posted at or near each cardinal point of the compass on the border of each private lake, and lake preserve.

Legislation. Sec. 2789. Act 1899 Division C. § 29, cited under § 2725.

2790. Transferee secure transfer of license.

SEC. 66. In case of a transfer of proprietorship or interest in any park, lake or preserve, the transferee shall within thirty days thereafter procure from the commissioner a transfer of the license endorsed on the back thereof.

Legislation. Sec. 2790. Act 1899 Division C. § 30, cited under § 2725.

2791. Existing privileges pay when.

SEC. 67. In case of parks, lakes and shooting and fishing privileges existing at the taking effect hereof, licenses therefor shall be applied for and the fee paid within three months after such taking effect.

Legislation. Sec. 2791. Act 1899 Division C. § 31, cited under § 2725.

2792. Term of licenses—Renewals.

SEC. 68. Licenses for private parks, lakes, and preserves may be for two years or ten years, as the applicant may desire and any license shall be renewed from time to time at request of the licensee for a like period as the original or a two-year license may be surrendered at any time, and one for ten years obtained on payment of the full amount of the fee for the latter. Each renewal shall bear the same number as the original, and be of similar form, with the word "Renewal" written on its face. A renewal must be applied for and the fee paid at or before the expiration of the original license or of the previous renewal, otherwise the same fee shall be paid as for an original license. Licenses for public parks and lakes shall be for ten years, and renewed from time to time.

Legislation. Sec. 2792. Act 1899 Division C. § 32, cited under § 2725.

**IV. DIVISION D. IMPORTATION—TRANSPORTATION—STORAGE
—SEIZURE—SALE.**

Section.

- 2793. Importation of game and fish restricted.
- 2794. Importation for propagation.
- 2795. Importation for other purposes, when allowed.
- 2796. License to import and sell game or fish.
- 2797. Importer shall invoice.
- 2798. Copy of invoice to purchaser.
- 2799. Re-disposal by purchaser or donee.
- 2800. Invoice attached—Effect.
- 2801. Sale of game and fish seized—Disposition of proceeds.
- 2802. Officer selling furnish invoice—Form.
- 2803. Commissioner may grant transportation permit—Form.
- 2804. When lawful to transport or store fish or game.
- 2805. Transporting out of state.
- 2806. Consignor attach invoice of contents.
- 2807. Carrier not liable, when.
- 2808. Storage permit—Form.
- 2809. Game and fish may be received or stored, when.
- 2810. Certificate valid only when exposed.

2793. Importation of game and fish restricted.

SEC. 69. No game or fish shall be brought into this state from any other state or territory except as provided in this division.

Legislation. Sec. 2793. Act 1899 Division D. § 1, cited under § 2725.

2794. Importation for propagation.

SEC. 70. Game and fish intended to be used for propagation in or stocking parks or waters within this state may be brought into this state from any other state or territory, and the commissioner shall issue certificates therefor without charge.

Legislation. Sec. 2794. Act 1899 Division D. § 2, cited under § 2725.

2795. Importation for other purposes, when allowed.

SEC. 71. Game or fish intended for any purpose other than those mentioned in the last preceding section may be brought into this state only from those states and territories the laws of which

at the time of such importation do not prohibit the importation and sale therein of game and fish from this state, and game and fish so imported into this state may be held and disposed of only as provided in this division.

Legislation. Sec. 2795: Act 1899 Division D. § 3, cited under § 2725.

2796. License to import and sell game or fish.

SEC. 72. No person shall import or bring into this state from any other state or territory, and sell any game of the kind mentioned in this act, or any rainbow, eastern brook, mountain or native trout, until he shall have procured from the commissioner a license as a game and fish importer, but no such license shall authorize the importation or sale of game, the killing of which is not permitted by the laws of this state. Such license shall be kept constantly and publicly exposed in the office or place of business of the licensee, and shall expire with the calendar year in which issued.

Legislation. Sec. 2796. Act of 1911, cited under § 2725. Substitute for § 2796, which was Act of 1903 p. 234 § 4, amending Act of 1899 § 4, cited under § 2725.

2797. Importer shall invoice.

SEC. 73. Upon the receipt of imported game or fish the importer shall immediately attach thereto an invoice stating the number and kind of game and fish, the name of the person and place received from, the date of reception, and the number of the importer's license, and sign the same.

Legislation. Sec. 2797. Act 1903 p. 234 § 5, amending Act 1899 § 5, cited under § 2725.

2798. Copy of invoice to purchaser.

SEC. 74. In case of a disposition of such game or fish, or any part thereof, the importer shall deliver such invoice, or a true copy thereof to the purchaser or donee.

Legislation. Sec. 2798. Act 1903 p. 234 § 6, amending Act 1899 § 6, cited under § 2725.

2799. Redisposal by purchaser or donee.

SEC. 75. In case the purchaser or donee shall desire to re-dispose of the same, or any part thereof, he shall indorse on such invoice, or on a copy thereof, the name of the purchaser or donee, his own name, and the date of redispotion, and deliver the same to the purchaser or donee.

Legislation. Sec. 2799. Act 1903 p. 234 § 7, amending Act 1899 § 7, cited under § 2725.

2800. Invoice attached—Effect.

SEC. 76. Such invoice or copies thereof so made when kept attached to such game or fish, shall authorize the possession, sale, storage, transportation and use of the same within this state at any time during the year of the date thereof.

Legislation. Sec. 2800. Act 1903 p. 234 § 8, amending Act 1899 § 8, cited under § 2725.

2801. Sale of game and fish seized—Disposition of proceeds.

SEC. 77. All game and fish seized under this act shall, without unnecessary delay, be sold by the officer seizing the same, or by the commissioner, except when a sale is impracticable or is likely to incur expenses exceeding the proceeds, in which case the same shall be donated to any needy person not concerned in the unlawful killing or possession thereof. Possession by virtue of such sale or donation shall not be unlawful. The proceeds thereof, after deducting the costs of seizure and sale, shall, if made by the commissioner or any warden, be paid into the state treasury, but if made by a sheriff or constable shall be paid, one-half to the commissioner and one-half into the treasury of the county where the seizure was made.

Legislation. Sec. 2801. Act 1899 § 9 Division D., cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*. 20 A. 17, 26, 76 P. 927.

2802. Officer selling furnish invoice—Form.

SEC. 78. In case of such seizure and disposition the officer making the same shall sign and give to each purchaser or donee an invoice stating the time and place of disposition, the kind, quantity and weight, as near as may be, of the game or fish disposed of, and the name of the purchaser or donee. Such invoice shall authorize possession, transportation within the state, storage and sale for thirty days after date, and shall be substantially in the following form:

Form 10. State of Colorado, Department of Game and Fish.

Officer's Invoice.

....., 189..

Disposed of by me this day to....., the following game and fish, to-wit: Kind,; number,; weight,..... the same having been seized and disposed of by me under the provisions of the game law. This authorizes possession, storage, transportation within this state, and sale. Void after thirty days from date.

.....,
(Title of Officer.)

Legislation. Sec. 2802. Act 1899 § 10 Division D., cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 18, 26, 76 P. 927.

2803. Commissioner may grant transportation permit—Form.

SEC. 79. When any person lawfully in possession of game or fish shall desire to transport the same within this state, the transportation of which is not herein otherwise provided for, or out of this state, the commissioner may, upon being satisfied that the possession and transportation is not in violation of the spirit of this act, grant a permit therefor, and thereafter during the

period of ten days after its date, such transportation shall be lawful between the points therein named. Such permit shall be substantially in the following form:

Form 11.

State of Colorado.
Department of Game and Fish.

Transportation Permit.

No. Denver,, 189....

This certifies that Mr. is entitled to transport from, Colorado, to, the following game and fish, to-wit: This authorizes possession and transportation between the points named herein only, but not sale or storage. Void after ten days from date.

.....
Commissioner.

Legislation. Sec. 2803. Act 1899 § 11 Division D., cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 16, 26, 76 P. 927.

2804. When lawful to transport or store fish or game.

SEC. 80. No railroad company, express company, stage company or other public carrier, messenger, baggage man, or person in charge of any public conveyance, nor any agent thereof, shall receive or store for transportation, or transport into, or within, this state, any game or fish except as follows, namely:

First—When there is attached thereto a proper and valid certificate or permit signed by the commissioner or having a fac simile of his signature thereon and on its face authorizing transportation of the article named therein, and during the period therein stated.

Second—At any time of year when the same is shipped from a private park or lake and has attached thereto a proper and valid invoice as required in Division C of this act.

Third—At any time of year when the same is in charge of the commissioner, or some person acting for him and under his written authority, or an officer having seized the same under the provisions of this act, or a game or fish commissioner or warden of the United States or some other state, territory or foreign country.

Fourth—At any time of year when the same has been seized and sold by an officer and has attached thereto an invoice as provided in this division, and for thirty days after the date of such invoice.

Fifth—When there is attached thereto a proper and valid importer's invoice, authorizing transportation of the article therein named and during the period therein stated.

Sixth—At any time of year when the same are small fry or fish eggs for stocking purposes.

Seventh—At any time of year when the same is being transported from some other state or territory into this state in conformity with section 2 or 3 of this division.

Eighth—During the open season therefor and for five days thereafter when presented for shipment in lawful number or quantity.

[Sections 2 and 3 above referred to are sections 2794 and 2795.]

[Division C above referred to comprises sections 2761-2792.]

Legislation. Sec. 2804. Act 1899 § 12 Division D., cited under § 2725.

2805. Transporting out of state.

SEC. 81. Game or fish may be transported out of this state only when accompanied by a permit from the commissioner authorizing the same, as provided in section 11 of this division, or when being transported from some other state or territory where taken or killed, through this state to some other state or territory.

[Section 11 referred to is section 2803.]

Legislation. Sec. 2805. Act 1899 § 13 Division D., cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 17, 26, 76 P. 927.

2806. Consignor attach invoice of contents.

SEC. 82. Whenever any game or fish is presented for transportation or transported in a box, barrel, package or other covering so the game or fish is not plainly visible, the consignor shall put on the outside of such covering a plain mark or label indicating the true contents, and the proper invoice, certificate or permit when one is required, shall be attached to the outside of the covering.

Legislation. Sec. 2806. Act 1899 § 14 Division D., cited under § 2725.

2807. Carrier not liable, when.

SEC. 83. Nothing herein shall make such carrier liable for transportation of game or fish when the same is transported without charge or way bill and in the possession of a passenger; but such fact shall not exempt the same from seizure, if unlawfully taken, killed, held in possession, or transported.

Legislation. Sec. 2807. Act 1899 § 15 Division D., cited under § 2725.

2808. Storage permit—Form.

SEC. 84. Any person having the lawful possession of game or fish killed within this state, may, upon proof of such fact, have issued to him by the commissioner, a storage permit which shall authorize storage, possession and use of the same not longer than ninety days next ensuing the open season therefor.

Such permit shall be substantially in the following form:

Form 12

State of Colorado.
Department of Game and Fish.

STORAGE PERMIT.

No.

Denver, 189..

Mr., residing at

being in the lawful possession of, killed within this state, is entitled to have the same kept in storage until next. This authorizes storage, possession and per-

sonal use until the date last mentioned above, but not transportation or sale.

.....,
Commissioner.

Legislation. Sec. 2808. Act 1899 § 16 Division D., cited under § 2725.

CITATIONS.

This section cited in an action of replevin involving certain deer hides.—*Hornbeke v. White*, 20 A. 18, 26, 76 P. 927.

2809. Game and fish may be received or stored, when.

SEC. 85. No game or fish shall be received for or held in storage except as follows, namely:

First—During the open season therefor and for five days thereafter when the same is stored for the person lawfully in possession of the same.

Second—At any time of year when there is attached thereto a proper and valid invoice as provided in division C. hereof, relating to parks and lakes.

Third—At any time of year when there is attached thereto a proper and valid importer's invoice as provided in this division, and during the life thereof.

Fourth—At any time of year when there is attached thereto a proper and valid officer's invoice as provided in this division relating to the seizure and sale of game and fish, but storage under this subdivision shall not continue for more than thirty days after the date of such invoice.

Fifth—When there is attached thereto a proper and valid certificate or permit signed by the commissioner and on its face authorizing storage of the article named therein, and during the period therein stated.

[Division C above referred to is found between sections 2761 and 2792.]

Legislation. Sec. 2809. Act 1899 § 16 Division D., cited under § 2725. There are two sections numbered 16 in Division D.

2810. Certificate valid only when exposed.

SEC. 86. No certificate, invoice, or permit shall be of any validity unless the same is kept constantly and publicly exposed with, or attached in plain sight to, the article to which it relates, or to the covering of the same when covered, except as in this act otherwise expressly provided.

Legislation. Sec. 2810. Act 1899 § 17 Division D., cited under § 2725.

V. DIVISION E. HOTELS AND RESTAURANTS.

Section.

2811. When game and fish may be served.

2812. Evidence of possession.

2813. Permits and invoices preserved.

2811. When game and fish may be served.

SEC. 87. No game or fish shall be held in possession in or placed upon the table of any hotel, restaurant, cafe or boarding house, or named on its menu or bill of fare as food for its patrons, either under the name used in this act or under any other name or guise whatever except as follows, namely:

First—At any time of year when the same has been sold and is held in possession in accordance with the provisions of division D. of this act, relating to the seizure and sale by an officer of game or fish killed or held in violation of this act.

Second—At any time of year, when the same has been furnished from a private park or lake of class A licensed under this act and sold, shipped and held in possession in accordance with the provisions of division C of this act relating to private parks and lakes, but this subdivision shall not apply to licensed preserves.

Third—At any time of year when the same has been lawfully imported into this state and sold and held in possession in accordance with the provisions of division D of this act, relating to the sale of imported game and fish.

Fourth—During the open season and for five days thereafter,

or during the life of a storage permit thereto attached, at the request of the person lawfully in possession of the same, and for the personal use of such person or his invited guests.

[Division C referred to is found between sections 2761-2792.]

[Division D referred to is found between sections 2793-2810.]

Legislation. Sec. 2811. Act 1899 § 1 Division E., cited under § 2725.

2812. Evidence of possession.

SEC. 88. The naming of game or fish upon any such menu as food for patrons shall be prima facie evidence of the possession of the same by the proprietor of such hotel, restaurant, cafe or boarding house.

Legislation. Sec. 2812. Act 1899 § 2 Division E., cited under § 2725.

2813. Permits and invoices preserved.

SEC. 89. All permits, invoices and copies of invoices received under this division shall be preserved by the proprietor for at least thirty days after the consumption of the game or fish therein described (unless sooner called for by the commissioner) and shall be delivered to the commissioner on demand therefor within such time.

Legislation. Sec. 2813. Act 1899 § 3 Division E., cited under § 2725.

VI. DIVISION F. UNLAWFUL DEVICES—DESTRUCTION OF SAME —DIVERSION AND POLLUTION OF WATERS.

Section.

2814. Unlawful to use device.

2815. Devices may be destroyed as public nuisance.

2816. Fishways must be maintained.

2817. Commissioner notified of intention to build dam, etc.

2818. Failure to provide fishway—Damages.

2819. Dispute between owner and commissioner—Remedy.

2820. Pollution of waters containing fish.

2821. Dam, etc., operating in violation of act a public nuisance.

2822. Action to abate nuisance—Injunction.

2823. By whom action brought—Appeals—Costs.

2824. When owner may bring action.

2825. District attorney shall represent state—Failure.

2826. Court shall determine controversy.

**VI. DIVISION F. UNLAWFUL DEVICES—DESTRUCTION OF SAME
—DIVERSION AND POLLUTION OF WATERS**

Continued.

Section.

2827. Effect of judgment of court.

2828. When supplemental petition may be filed—Effect.

2829. New trial.

2830. Appeals—Remand.

2831. Appeal from injunction proceedings before final judgment.

2832. When act enforced by criminal prosecution.

2814. Unlawful to use devices.

SEC. 90. Except as in this act otherwise permitted, no person shall use in the pursuit, taking, wounding, or killing of game and fish any dog, net, seine, trap, snag hook, trot line, artificial lights or device whatever.

Legislation. Sec. 2814. Act 1899 § 1 Division F., cited under § 2725.

2815. Devices may be destroyed as public nuisance.

SEC. 91. Every net, seine, trap, explosive, poisonous or stupefying substance or device used or intended for use in taking or killing game or fish in violation of this act, and set, kept or found in or upon any of the waters in this state or upon the shores thereof, and every trap, device or deadfall found baited in violation of this act, is hereby declared to be a public nuisance and may be abated and summarily destroyed by any person, and it shall be the duty of every officer authorized to enforce this act to seize and summarily destroy the same, and no prosecution or suit shall be maintained for such destruction; *Provided*, That nothing in this division shall be construed as affecting the right of the commissioner to use such means as may be proper for the promotion of game and fish propagation and culture, nor as authorizing the seizure or destruction of firearms.

Legislation. Sec. 2815. Act 1899 § 2 Division F., cited under § 2725

2816. Fishways must be maintained.

SEC. 92. Except as otherwise provided in this act, every dam

or other artificial obstruction in the public waters containing food fish which interferes with the free passage of fish, and not provided with a sufficient fish way for the free passage of fish up and down the same, shall have such fish way constructed therein within six months after the taking effect of this act, and no such dam or artificial obstruction shall hereafter be constructed, placed or maintained in such waters without such fish way, except as hereinafter provided, but this section shall not apply to a point in a stream at which the whole volume of water is taken out and lawfully applied, without unnecessary waste, to a beneficial use.

Legislation. Sec. 2816. Act 1899 § 3 Division F., cited under § 2725.

2817. Commissioner notified of intention to build dam, etc.

SEC. 93. No dam or other obstruction to the free passage of fish shall hereafter be commenced, constructed or placed in any public stream containing fish, until the person proposing to do so shall first give written notice to the commissioner of such intention, together with a statement of the name and location of such stream, the proposed location, size and purpose of such dam or obstruction, and thereafter comply with the reasonable directions of the commissioner in relation to the construction and maintenance of a fish way therein. The expense of construction and maintenance of such fish way shall be borne by the person erecting such dam or obstruction.

Legislation. Sec. 2817. Act 1899 § 4 Division F., cited under § 2725.

2818. Failure to provide fish way—Damages.

SEC. 94. Every fish way shall be constructed, maintained and repaired at the expense of the owner and operator of such dam or obstruction, and in the event of failure or neglect to comply with any reasonable directions given by the commissioner he may cause such construction, maintenance and repair to be made and the expense thereof recovered from such owner or operator in a civil action with a penalty of ten dollars for each and every day of such failure or neglect, and from the time such construction or repair is commenced the expense thereof and the penalty aforesaid shall be a lien upon such dam or obstruction and the

premises connected therewith, until the completion thereof and payment of the expense and penalty incurred.

Legislation. Sec. 2818. Act 1899 § 5 Division F., cited under § 2725

2819. Dispute between owner and commissioner—Remedy.

SEC. 95. In case of a dispute between the commissioner and any owner or operator as to the necessity, character, maintenance or repair of any fish way, the same may be judicially determined as herein provided in relation to alleged obstruction and pollution.

Legislation. Sec. 2819. Act 1899 § 6 Division F., cited under § 2725

2820. Pollution of waters containing fish.

SEC. 96. No sawdust, tailings or other deleterious or poisonous substance shall be allowed to run or pass into or pollute any public waters containing fish, or deposited or left where it may be carried by natural causes into such waters, in such quantities as to destroy or be detrimental to the fish or spawn therein, except as hereinafter provided.

[See also sections 1817 and 2876.]

Legislation. Sec. 2820. Act 1899 § 7 Division F., cited under § 2725.

2821. Dam, etc., operating in violation of act a public nuisance.

SEC. 97. Every dam or other artificial obstruction, every placer mine, mill, reduction plant or other industrial enterprise, constructed, maintained or operated in violation of this act, is hereby declared unlawful and a continuing public nuisance and the same may be enjoined or abated or its objectionable features modified as hereinafter provided, and the person constructing, maintaining or operating the same punished as for a violation of this act, and every day the same is so maintained or operated shall be deemed a separate offense.

Legislation. Sec. 2821. Act 1899 § 8 Division F., cited under § 2725.

2822. Action to abate nuisance—Injunction.

SEC. 98. Whenever any such obstruction or pollution is al-

leged to exist, the commissioner, any citizen of the state or the owner or operator of such obstruction or industry, may file a petition in the district court of the county in which the obstruction or pollution is alleged to exist or originate, or into which any of the polluted water flows, for the purpose of having an equitable determination of the fact, nature and extent of such an alleged obstruction or pollution and the remedy to be applied, if any, and a temporary injunction may issue upon notice, if the fact of obstruction or pollution be evident and the necessity urgent. Issues shall be made up as in other civil actions.

[Injunction upon notice. See civil code section 164.]

Legislation. Sec. 2822. Act 1899 § 9 Division F., cited under § 2725.

2823. By whom action brought—Appeals—Costs.

SEC. 99. The action may be brought by the commissioner or a citizen of the state in the name of the people of the state on the relation of such person, but no such action shall be brought by a citizen without the consent of the commissioner, the attorney general or the district attorney of the district.

In case an injunction is issued or an appeal taken on behalf of the people, no bond shall be required. The relator shall not be responsible for costs, but the same shall be paid by the state if it be defeated, or the commissioner may pay the same from any funds provided for the enforcement of the game and fish laws.

Legislation. Sec. 2823. Act 1899 § 10 Division F., cited under § 2725.

2824. When owner may bring action.

SEC. 100. If the action is brought by the owner or operator, the people of the state shall be made defendants, and service of the summons shall be made upon the commissioner, and a cross-petition may be filed with the same effect as an original petition.

Legislation. Sec. 2824. Act 1899 § 11 Division F., cited under § 2725.

2825. District attorney shall represent state—Failure.

SEC. 101. It shall be the duty of the district attorney of the district where any such action is brought, or to which it

may go at any time, to appear on behalf of the people of the state, and conduct the same under the direction of the commissioner.

If the district attorney shall fail or neglect to prosecute or defend such action to the satisfaction of the commissioner, it shall be the duty of the attorney general to appear, and prosecute or defend for the people, or the commissioner may employ special counsel.

Legislation. Sec. 2825. Act 1899 § 12 Division F., cited under § 2725

2826. Court shall determine controversy.

SEC. 102. On final hearing the court shall, without the intervention of a jury, determine if such obstruction or pollution exists, and if so, the cause, nature and extent thereof, the injurious effect, if any, upon the fish and their propagation, the means adopted, if any, by such owner or operator to obviate or prevent the same, the practicability or otherwise of more efficient means to prevent injury therefrom, and any other facts necessary to form an intelligent judgment of the public necessity and importance of the industry concerned as compared with the like necessity and importance of such waters as a source of fish supply if unaffected thereby, and having due regard to the public welfare and such constitutional and legal rights as may exist, may order the adoption by the owner or operator of such means as may be reasonable and practicable, to prevent or lessen the injurious effect of the same, or may abate the obstruction or perpetually enjoin the operations which cause the injury, or render such other judgment as the right of the case may require. In determining the questions aforesaid the court shall not be precluded from considering the other beneficial uses to which such waters are or may be applied.

Legislation. Sec. 2826. Act 1899 § 13 Division F., cited under § 2725.

2827. Effect of judgment of court.

SEC. 103. The final judgment and decree of the court until reversed or modified, and of the supreme court on final hearing, shall be a final determination of the rights of the parties thereto, under the facts existing and found by the court, and when complied with by the owner or operator or if the judgment shall be in his favor

shall be a bar to any criminal prosecution for the same or similar acts unless the cause, extent or nature of the injury be thereafter changed so as to affect the fish supply more injuriously.

Legislation. Sec. 2827. Act 1899 § 14 Division F., cited under § 2725.

2828. When supplemental petition may be filed—Effect.

SEC. 104. In the event of a change in the cause, extent or nature of such injury, either increasing or diminishing the effect thereof, either party may at any time thereafter file a supplemental petition in the district court where the cause was tried, and have such increased or diminished effect determined and the judgment modified accordingly, but the facts originally found shall not be retried upon such supplemental petition, nor shall the original judgment, whether finally rendered in such court or the supreme court, be modified or changed except as required by such changed conditions.

Legislation. Sec. 2828. Act 1899 § 15 Division F., cited under § 2725.

2829. New trial.

SEC. 105. Nothing herein shall prevent the granting of a new trial as provided by law.

Legislation. Sec. 2829. Act 1899 § 16 Division F., cited under § 2725.

2830. Appeals—Remand.

SEC. 106. Appeal or writ of error in such action shall lie to or from the supreme court only, and all the evidence offered or introduced shall be reduced to writing and preserved, and in the event of an appeal the supreme court shall try and determine the case de novo on such evidence; *Provided*, That, if the evidence or the findings of the court below on any essential fact be not satisfactory, the supreme court may remand the same for re-trial.

Legislation. Sec. 2830. Act 1899, § 17 Division F., cited under § 2725.

2831. Appeal from injunction proceedings before final judgment.

SEC. 107. In case an order is made, before final judgment;

granting, modifying or refusing an injunction, an appeal from or writ of error to such order may be taken without waiting for final judgment.

Legislation. Sec. 2831. Act 1899 § 18 Division F., cited under § 2725.

2832. When act enforced by criminal prosecution.

SEC. 108. Nothing in this division shall prevent the enforcement of this act by criminal prosecution in the absence of the equitable proceeding herein provided for, or during the pendency of the same, unless the court in which such equitable proceeding is pending shall for good cause shown, restrain such criminal prosecution, which it may do, nor shall anything in this division affect any existing right for the prevention or redress of private injuries or wrongs.

Legislation. Sec. 2832. Act 1899 § 19 Division F., cited under § 2725

VII. DIVISION G. HUNTING LICENSES.

Section.

- 2833. License not transferable.
- 2834. Act not apply to minors under 12.
- 2835. Non-resident hunting and fishing license.
- 2836. Non-resident fishing license fee.
- 2837. Aliens must have license.
- 2838. License fee to county recorder.
- 2839. Licenses not transferable—Describe holder.
- 2840. Commissioner furnish recorder licenses and coupons.
- 2841. Authority conferred by coupon.
- 2842. Possession prima facie evidence.
- 2843. Duty of officers to arrest violators and inspect licenses.
- 2844. Recorder report to commissioner.
- 2845. One license per year to same person.
- 2846. Hunting or fishing in licensed park.
- 2846-A. Certificate to be attached to game.

2833. License not transferable.

SEC. 109. No person shall shoot or engage in hunting any game, whether protected by law or not, or in fishing for any fish

protected by law without first having procured a license therefor as hereinafter provided, and having at the same time such license in his possession; nor shall any person lend, sell, give or assign his license or any coupon belonging thereto except when game is disposed of as permitted by law, in which case proper certificate must accompany it.

Legislation. Sec. 2833. Act of 1909 p. 390. Substitute for § 2833, which was § 1 of Div. G. Act of 1903 p. 235.

2834. Act not apply to minors under 12.

SEC. 110. Nothing in this division contained shall authorize the pursuit, taking, wounding or killing of game or fish in the closed season, or contrary to the law now in force or hereinafter enacted, nor in any manner interfere with the enforcement or operation of such laws, except as herein otherwise provided, or be deemed applicable to fishing by persons under twelve years of age.

Legislation. Sec. 2834. Act of 1909 p. 390. Substitute for § 2834, which was § 2 of Div. G. Act of 1903 p. 235.

2835. Non-resident hunting and fishing license.

SEC. 111. All licenses must be upon blanks furnished by the commissioner, but may be issued by the commissioner or by any county recorder, and except those for bird hunting only, shall be good in any and all counties in the state.

Licenses shall be as follows:

- (1) A non-resident hunting license.
- (2) A non-resident bird hunting license, good only in the county therein named.
- (3) A resident hunting license.
- (4) A fishing license for non-resident.
- (5) A non-resident combined hunting and fishing license, issued on one blank.

Legislation. Sec. 2835. Sub-section of § 7 of Act of 1911, cited under § 2725. Substitute for § 2835 as enacted in 1909 p. 391.

The Act of 1909 was itself a substitute for original § 2835, which was Act of 1903 p. 235 § 3 Div. G.

2836. Non-resident fishing license fee.

SEC. 112. The fee for a fishing license for a non-resident, it shall be \$2.00.

Legislation. Sec. 2836. Act 1909 p. 391. Substitute for § 2836, which was Act 1903 p. 235 § 4 Division G.

2837. Aliens must have license.

SEC. 113. No person not a citizen of the United States and a bona fide resident of this state shall engage in hunting or fishing therein without a non-resident hunting or fishing license, and the commissioner or county recorder shall require satisfactory proof of residence from any person claiming to be exempt from the operation of this section.

Legislation. Sec. 2837. Sub-section of § 7 of said Act of 1911, cited under § 2725. Substitute for Act of 1909 p. 391, which was itself a substitute for § 2837, which was Act of 1903 Div. G. § 5 p. 235.

2838. License fee to county recorder.

SEC. 114. When a license is issued by a county recorder, the fee shall be the same as if issued by the commissioner, and 25 cents thereof shall be for the personal compensation of such recorder for filing the application, issuing the license, keeping a record thereof, making a report, and all other services connected therewith, and shall be in addition to any other salary or compensation. The remaining seventy-five cents to be remitted to the game and fish commissioner.

Legislation. Sec. 2838. Sub-section of § 7 of said Act of 1911, cited under § 2725. Substitute for Act of 1909 p. 391, which was itself a substitute for § 2838, which was Act of 1907 p. 416 § 1, amending Act of 1903 Div. G. § 6 p. 236.

2839. Licenses not transferable—To be numbered and describe the holder.

SEC. 115. No license shall be transferable, or be any protection except to the person to whom it was issued and therein named, and while in his actual possession, and any transfer or alteration of a license or coupon shall render the same void, and all licenses shall expire with the calendar year in which issued,

Each license shall be numbered and shall state the name, age, sex, and place of residence of the person to whom issued, and the officer issuing the same shall keep a record thereof.

Legislation. Sec. 2839. Act of 1909 p. 391. Substitute for § 2839, which was § 7 of Div. G. Act of 1903 p. 236.

2840. Commissioner furnish recorder licenses and coupons.

SEC. 116. It shall be the duty of the commissioner to prepare and furnish on or before May 1 of each year to the county recorder blank licenses in such number as may be required, and no license of any kind shall be issued except on a blank furnished by the commissioner, which shall have attached to it the necessary coupons, each coupon having thereon a fac-simile of his signature, and when any person shall take or kill any game quadruped, such person shall as soon as practicable detach from his license and attach thereto, in plain sight, the proper coupon, date and sign his name to the same, and the coupon shall be kept so attached so long as any considerable portion of the carcass remains unconsumed, and in case it is desired to preserve either the hide, head, feet or horns, the coupon shall be kept attached to such part as long as it is preserved.

Legislation. Sec. 2840. Sub-section of said § 7 of Act of 1911, cited under § 2725. Substitute for Act of 1909 p. 391, which was itself a substitute for § 2840, which was Act of 1903 Div. G. § 8 p. 236.

CITATIONS.

Sections 5 and 6 of the act of 1891 requiring the tagging of hides, referred to.—*Hornbeke v. White*, 20 A. 26, 76 P. 930.

2841. Authority conferred by coupon.

SEC. 117. The proper coupon, when so dated, signed and attached to game lawfully taken or killed and lawfully in possession shall authorize possession, use, storage and transportation of the carcass, or any part thereof within the state during the open season therefor of the year of its date, and for five days thereafter. The coupon so attached to the hide, head, feet or horns shall authorize any licensed taxidermist to dress or mount the same, and shall render it lawful for any person to hold, possess and transport the same within this state so long as such coupon is so attached.

Legislation. Sec. 2841. Act of 1909 p. 392. Substitute for § 2841, which was § 9 of Div. G. of Act of 1903 p. 236.

2842. Possession prima facie evidence.

SEC. 118. The possession of protected game or fish at any time in the field shall be prima facie evidence that the party having such possession is engaged, or has been engaged, within the year in taking the same.

Legislation. Sec. 2842. Act of 1909 p. 392. Substitute for § 2842, which was § 10 of Div. G. Act of 1903 p. 237.

2843. Duty of officers to arrest violators and inspect licenses.

SEC. 119. The commissioner and every warden throughout the state, and every sheriff and constable within his respective county, is authorized, and it shall be his duty, to arrest any person guilty of a violation of this division and to demand of any person whom he has reason to believe is or has been engaged in hunting or fishing in this state, within the year, the immediate production of a proper license therefor and an opportunity to inspect and copy the same, and it shall be the duty of every person required by this act to procure and have in possession such license, to so produce the same, and permit such inspection and copying.

Legislation. Sec. 2843. Act of 1909 p. 392. Substitute for § 2843, which was § 11 of Div. G. Act of 1903 p. 237.

2844. Recorder report to commissioner.

SEC. 120. It shall be the duty of every county recorder collecting any license fee under this act to report to the commissioner on or before November 10 in each year, or whenever the commissioner may require, a full statement of all such licenses issued by him, and to return to the commissioner all unused licenses, together with a remittance of the fees therefor.

Legislation. Sec. 2844. Sub-section of said § 7 of said Act of 1911, cited under § 2725. Substitute for Act of 1909 p. 392, which was a substitute for § 2844, which was Act of 1903 Div. G. § 12 p. 237.

2845. One license per year to same person.

SEC. 121. No person shall procure or use more than one of the same number, nor procure or use more than one license in any

one year, nor use any coupon after it has been used once and a violation of this section shall render all such licenses and coupons void.

Legislation. Sec. 2845. Act of 1909 p. 393. Substitute for § 2845, which was § 13 of Div. G. of Act of 1903 p. 237.

2846. Hunting or fishing in licensed park.

SEC. 122. Every person hunting or fishing in any licensed park or preserve must have a license as provided in this division, but where game is lawfully killed in a licensed park and an invoice is attached thereto, as provided in division C, of said act, no coupon from such license need be attached.

Legislation. Sec. 2846. Act of 1909 p. 393. Substitute for § 2846, which was § 14 of Div. G. of Act of 1903 p. 237.

2846-A. Certificate to be attached to game.

SEC. 122a. Birds lawfully taken at large, and fish lawfully taken from public waters within the state during the open season must have attached thereto a certificate in the following form:

Form 13.

State of Colorado.

I hereby certify that the (here insert kind and number of birds or fish) to which this certificate is attached were lawfully taken by me in.....county, Colorado, on the.....day of..... 19....

Signed.....

Legislation. Sec. 2846A. New section added by Act 1909 p. 393. Although the sections numbered 2833-2846 purport to be substituted section by section in the Act of 1909 the subject matter of the substituting section is not always the subject matter of the old section.

VIII. DIVISION H. GUIDE LICENSES.

Section.

2847. Must obtain guide license.

2848. Authority under guide license—Connivance—Penalty.

2849. Report of guide—Guide must have hunting license.

2847. Must obtain guide license.

SEC. 123. No person shall directly or indirectly engage or act as guide, as the term is commonly understood, for any person or party engaged in hunting protected game, without having satisfied the commissioner of his reliability and competency and procured from the commissioner a license therefor and having the same in his possession while so acting.

Legislation. Sec. 2847. Act 1903 p. 238 § 1 Division H.

2848. Authority under guide license—Connivance—Penalty.

SEC. 124. Every guide licensed under this act shall, by virtue of such license, be entitled to act as a deputy warden, without pay, and when commissioned as such, shall have all the powers of a deputy warden, as provided in said act, and if he shall violate, or connive or assist in any violation of this act, his license and commission may be revoked by the commissioner, and he shall be disqualified to act as a guide during that year, and also be liable to punishment as for a violation of said act.

[The words "said act" construed section 2885.]

Legislation. Sec. 2848. Act 1903 p. 238 § 2 Division H.

2849. Report of guide—Guide must have hunting license.

SEC. 125. Every guide shall, as often as requested and on blanks furnished by the commissioner, report under oath to the commissioner the names and number of persons guided by him, the number of days he has been so employed, and, as near as practicable, the number of game and fish taken or killed by such persons and himself, and such other information as the commissioner may deem desirable. The fee for a guide license shall be in addition to the fee required for a hunting license, and every guide shall procure a state hunting license and have the same in his possession while acting as a guide. All such licenses shall expire with the calendar year in which issued.

Legislation. Sec. 2849. Act 1903 p. 238 § 3 Division H.

IX. DIVISION J. TAXIDERMISTS—SCIENTIFIC SOCIETIES—
MOUNTED SPECIMENS.

Section.

- 2850. Taxidermist must have license.
- 2851. Specimen—Defined—Importing and exporting—Dressing.
- 2852. Commissioner examine specimens and affix tags.
- 2853. Same—Application to import.
- 2854. Permit to collect for scientific purposes—Bond.
- 2855. Certificate of lawful possession.
- 2856. Conditions under which specimens may be held.
- 2857. Head or horns separated—Duplicate tags.
- 2858. Not applicable to live game.

2850. Taxidermists must have license.

Sec. 126. No person shall engage in taxidermy for hire until he shall have procured a license therefor.

Licenses under this section for taxidermists engaged in business at the taking effect of this act must be procured within three months after such taking effect.

Legislation. Sec. 2850. Act 1903 p. 239 § 1 Division J.

2851. Specimen defined—Importing and exporting—Dressing.

Sec. 127. The word "Specimen" as herein used means the head, horns and hide, or either one or all of them, mounted or dressed, or unmounted or undressed, of a game quadruped protected by law, and no such specimen shall be brought into this state by any person, except as provided in said act, nor shall any such specimen, either domestic or brought from any other state, territory or foreign country, be mounted, dressed, transported or held in possession in this state by any person, except as provided in this division, nor shall any such specimen be sold unless the same was lawfully imported or killed prior to the taking effect of this act, and the evidence thereof attached thereto, as herein provided.

Legislation. Sec. 2851. Act 1903 p. 239 § 2 Division J.

2852. Commissioner examine specimens and affix tags.

SEC. 128. It shall be the duty of the commissioner as soon as may be after the taking effect of this act to examine, or cause to be examined, all specimens of protected game quadrupeds in the possession of taxidermists, and to furnish and have a tag affixed, without charge, to each specimen which appears to be lawfully held, and it shall be the duty of every person to afford an opportunity for and permit such examinations and tagging without hindrance.

Legislation. Sec. 2852. Act 1903 p. 239 § 3 Division J.

2853. Same—Application to import.

SEC. 129. If any specimen has been lawfully imported by, or was lawfully owned by and in the possession of a taxidermist prior to the passage of this act, the commissioner shall, upon satisfactory proof of such fact, affix thereto without charge, a tag showing the same, or any taxidermist or other person desiring to import any specimen, shall apply to the commissioner who, if such importation appears to be proper, shall issue a certificate therefor, and such specimen may be lawfully held or sold so long as the evidence thereof remains attached thereto.

Legislation. Sec. 2853. Act 1903 p. 239 § 4 Division J.

2854. Permit to collect for scientific purposes—Bond.

SEC. 130. The commissioner may, upon the written request of the governor, issue to any representative of, or person designated by, a reputable and duly incorporated society of natural history or science, a permit to collect for scientific purposes only, at any time of the year, any of the game and fish protected by law, upon the applicant being recommended by two well-known scientific men and executing to the state a bond in the sum of \$1,000.00, with acceptable sureties. Such permit shall authorize the person therein named to take or kill within the state and deliver to such society such game and fish, and the same, when so lawfully procured, may be thereafter mounted or dressed and held in possession: but nothing herein shall authorize the procurement

of game or fish taken or killed unlawfully, or exempt a person unlawfully taking or killing the same from the penalties therefor.

In case any game or fish procured under this section shall not be appropriated to scientific purposes, the bond aforesaid shall be forfeited to the state and the permit become void.

All persons acting under a permit as aforesaid shall be required to have a hunting license for the same purpose.

Legislation. Sec. 2854. Act 1903 p. 240 § 5 Division J.

2855. Certificate of lawful possession.

SEC. 131. Any person other than a taxidermist, in lawful possession of any specimen, and desiring to perpetuate the evidence of the legality of his possession, may apply to the commissioner, and upon it being so made to appear, the commissioner shall issue to him a certificate to that effect.

Legislation. Sec. 2855. Act 1903 p. 240 § 6 Division J.

2856. Conditions under which specimens may be held.

SEC. 132. The conditions under which specimens referred to in this division may be dressed, mounted, held in possession or transported within this state, are as follows, namely:

First—When there is attached thereto a hunting license coupon, as provided in this act.

Second—When there is attached thereto a scientific permit, as provided in this act.

Third—When there is attached thereto a certificate, permit, tag or invoice, as provided in this act, or in the act to which this is amendatory.

Legislation. Sec. 2856. Act 1903 p. 240 § 7 Division J.

2857. Head or horns separated—Duplicate tags.

SEC. 133. In case it is desired that the head, horns, feet or hide shall be separated, the commissioner may issue, without charge, a duplicate coupon or tag for one or more of the parts, describing the same.

The alteration of any certificate, permit, tag or invoice, or its use on any other specimen than the one for which it was issued shall render it void.

Legislation. Sec. 2857. Act 1903 p. 241 § 8 Division J.

2858. Not applicable to live game.

SEC. 134. Nothing in this division shall be deemed applicable to living game.

Legislation. Sec. 2858. Act 1903 p. 241 § 9 Division J.

X. DIVISION K. DOMESTIC CERTIFICATES—GENERAL PROVISIONS.

Section.

2859. Certificate must be attached—Effect.

2860. Form of certificate.

2861. Action for unlawful killing—Damages—Judgment—Disposition.

2862. Fine shall not be suspended.

2863. Commissioner shall prescribe form and blanks.

2864. Commissioner shall publish game laws.

2859. Certificate must be attached—Effect.

SEC. 135. Every person lawfully taking any domestic game or fish shall without delay attach thereto a certificate signed by him and stating the kind, number, and when and where the same were taken, and in case the same, or any part thereof, shall be donated to another, shall indorse such fact on the certificate, or on a copy of the same, and sign it. Such certificate (or copy indorsed when required) shall be deemed prima facie evidence of lawful possession, and authority to transport and store the same within the state during the open season and for five days thereafter; and the possession, transportation or storage of such game or fish without such certificate (or copy indorsed when required) attached thereto shall be unlawful.

Provided, That this section shall not apply to game or fish having attached thereto a proper hunting license coupon, or an invoice from a private park or private lake.

Blank certificates in the form of tags for this purpose may be furnished by the commissioner at cost.

Legislation. Sec. 2859. Act 1903 p. 241 Division K. § 1.

2860. Form of certificate.

SEC. 136. Such certificate shall be substantially in the following form:

Form 13.

State of Colorado.
Department of Game and Fish

Domestic Certificate.

I hereby certify that the.....to which this certificate is attached,, lawfully taken by me in..... county, Colorado, on the.....day of....., 190...

(Signed).....

Legislation. Sec. 2860. Act 1903 p. 242 Division K. § 2.

2861. Action for unlawful killing—Damages—Judgment—Disposition.

SEC. 137. The commissioner, or any warden, if he so elect, or any other officer charged with the enforcement of the laws relating to game and fish, if so directed by the commissioner, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of any game quadruped, bird or fish, and recover judgment for each such animal the following minimum sums as damages for the taking, killing or injury thereof, to-wit:

For each elk	\$ 200.00
For each deer	50.00
For each antelope	100.00
For each mountain sheep	200.00
For each buffalo or bison	1,000.00

For each beaver	25.00
For each bird	10.00
For each fish	1.00

No verdict or judgment recovered by the state in such action shall be for a less sum than hereinbefore fixed, but may be for such greater sum as the evidence may show the value of the animal to have been when living and uninjured. Such action for damages may be joined with the action for possession now provided in said act, and recovery had for the possession and also the damages as aforesaid. All moneys collected under this section shall be immediately paid over by the justice or clerk of the court collecting the same, as follows: One-third into the treasury of the county where the offense was committed, one-third to the fish and game fund, and one-third to the person instituting the action; *Provided*, That if the person instituting the action shall fail for ten days after such collection, and due notice thereof, to demand the portion to which he is entitled, same shall be paid to the fish and game fund and the right of such person thereunder shall be deemed forfeited. The commissioner, any warden or officer instituting a prosecution shall be entitled to a share in the fine collected the same as any other person and shall be a personal perquisite for which he need not account.

Neither the pendency nor determination of such action, nor payment of such judgment, nor the pendency nor determination of a criminal prosecution for the same taking, wounding, killing or possession shall be a bar to the other, nor affect the right of seizure under any other provision of the laws relating to game and fish.

Legislation. Sec. 2861. Act 1903 p. 242 Division K. § 3.

2862. Fine shall not be suspended.

SEC. 138. No fine, penalty or judgment assessed or rendered under this act, or the act to which it is amendatory, shall be suspended, reduced or remitted otherwise than as expressly provided by law.

Legislation. Sec. 2862. Act 1903 p. 243 Division K. § 4.

2863. Commissioner shall prescribe forms and blanks.

SEC. 139. It shall be the duty of the commissioner, and he shall have authority to prescribe and prepare, all the forms and blanks required by this act.

He shall also prescribe and prepare forms and blanks for applications for all licenses, certificates and permits, and no license, certificate or permit shall be issued except upon an application sworn to by or on behalf of the applicant, stating his age, place of residence and such other particulars as will identify the person to whom the license, certificate or permit is to be issued, and any false statement in any application shall render the license or permit issued thereon void.

Legislation. Sec. 2863. Act 1903 p. 243 Division K. § 5.

2864. Commissioner shall publish game laws.

SEC. 140. Immediately upon the passage of this act, and every two years thereafter, the commissioner shall revise and publish in pamphlet form, for general distribution, the laws and regulations in force relating to game and fish, at a cost not exceeding \$300.00 biennially, and the same shall be prima facie evidence and shall be taken as such in all courts of this state of the existence of such laws, rules and regulations.

Legislation. Sec. 2864. Act 1903 p. 243 § 6, superseding Act 1899 p. 185 § 5, which appropriated \$200 for publishing Fish and Game Laws in pamphlet form.

XI. DIVISION M. RECORDS—REPORTS—FEES—REPEAL—TAKING EFFECT.**Section.**

- 2865. Division H made division M—Fees.
- 2866. Records to be kept by commissioner.
- 2867. License fees of commissioner.
- 2868. Commissioner keep blanks for sale.
- 2869. When fees of officer paid by county—When by state.
- 2870. Fees of officer making arrest—Personal perquisite.
- 2871. Fees of officer making seizure and sale.
- 2872. Officers report seizure and sale to commissioner.
- 2873. Wardens report violations to commissioner.

2865. Division H. made division M.—Fees.

SEC. 141. Division H of said act is hereby made division M, and the following fees shall be collected for the licenses, certificates and permits authorized by this act and not otherwise provided for:

For each non-resident general hunting license.	\$25.00
For each non-resident bird hunting license for	
1 day	2.00
For each additional day.....	1.00
For each state hunting license.....	1.00
For each guide license.....	5.00
For each taxidermist license, one year.....	25.00
For each importer's license.....	50.00

[The act above referred to is the act of 1899, most of which is found in the first part of this chapter.]

[For additional fees see section 2867.]

Legislation. Sec. 2865. Act of 1903 p. 244 § 8. See note to § 2867.

2866. Records to be kept by commissioner.

SEC. 142. The commissioner shall keep a record of all moneys received and of all licenses, certificates, permits and tags issued by him, numbering each class separately, and in case of the loss of any one of them before its expiration by use, or lapse of time, and upon being satisfied of the good faith of the applicant, shall issue a duplicate thereof bearing the same date and number as the original. On the face of such duplicate he shall endorse the following: "Duplicate, Original Lost," and such duplicate shall have the same force and effect as the original, and he shall collect therefor the same fee as for the original, but not exceeding the sum of \$10 in any case.

Legislation. Sec. 2866. Act 1899 p. 219 § 1 Division H. (now M.), cited under § 2725.

2867. License fees of commissioner.

SEC. 143. That the commissioner shall charge and collect the following fees:

For each permit to take suckers, etc.	\$ 1.00
For each permit for storage.	1.00
For each certificate of importation, edible portion.	1.00
For scientific permit, domestic society.	1.00
For scientific permit, foreign society.	50.00
For each permit to capture or exchange.	1.00
For each permit to lessen game or fish in park or lake.	1.00
For each quadruped park, two years license.	25.00
For each renewal of same.	15.00
For each quadruped park, 10 years license.	100.00
For each renewal of same.	75.00
For each bird park, two years license.	10.00
For each renewal of same.	8.00
For each bird park, 10 years license.	25.00
For each renewal of same.	20.00
For each lake, two years license for first lake.	10.00
For each renewal of same.	8.00
For each lake, two years license for each additional lake.	5.00
For each renewal of same, each additional lake.	3.00
For each lake, ten years license for first lake.	25.00
For each renewal of same.	15.00
For each lake ten years license each additional lake.	10.00
For each renewal of same, each additional lake.	5.00
For each preserve, two years license.	10.00
For each renewal of same.	8.00
For each preserve, ten years license.	25.00
For each renewal of same.	15.00
For each permit to import specimens for mounting purposes only and exporting the same, from and to the same party.	1.00
For each transfer of any license.	1.00
For each permit for transportation out of the state:	
For each elk edible portion.	10.00
For each mountain sheep edible portion.	5.00
For each deer edible portion.	5.00
For each bird edible portion.25
For each fish edible portion.25
For each non-resident hunting license.	10.00

For each non-resident bird hunting license, for one day....	1.00
For each non-resident bird hunting license, for one week..	2.00
For each state hunting license.....	1.00
For each non-resident fishing license.....	2.00
For each guide license.....	5.00
For each taxidermist license, one year.....	5.00
For each importers license, one year.....	25.00
For each certificate, permit or license not herein provided for	1.00

And it is hereby provided that no public lake which has been stocked with fish at public expense shall be leased to any corporation or individual.

Legislation. Sec. 2867. § 7 of Act of 1911, cited under § 2725. Substitute for § 2867, as enacted in 1909 p. 389, which substituted § 2867, which was Act of 1899 p. 219 § 2, cited under § 2725.

The preamble to the Act of 1909 purported to make it a substitute for § 2867, but in fact it abrogates § 2865 also.

2868. Commissioner keep blanks for sale.

SEC. 144. The commissioner shall procure and keep on hand a supply of all the blanks required for use under this act, and immediately upon the taking effect thereof shall furnish to the proprietors of licensed parks and lakes, and to importers and vendors entitled under this act to import and sell foreign or domestic game and fish, such blank invoices as they may require, at a price not exceeding 25 per cent. advance on their cost.

Legislation. Sec. 2868. Act 1899 p. 220 § 3 Division II. (now M.), cited under § 2725.

2869. When fees of officers paid by county—When by state

SEC. 145. When an arrest for a violation of this act is made by a sheriff or constable, the usual fees in a case of misdemeanor shall be taxed in his favor, and if not collected from the defendant, or if the defendant is acquitted, shall be paid by the county; and the necessary and ordinary fees and expenses of every posse lawfully summoned and engaged in the enforcement of this act shall be taxed as a part of the costs, and if not collected from some person liable therefor, shall be paid out of the state treasury

in the same manner as is provided for the payment of the expenses of the commissioner.

[For usual fees of sheriff or constable see sections 2532 and 2540.]

Legislation. Sec. 2869. Act 1899 p. 221 § 4 Division H. (now M.), cited under § 2725.

2870. Fees of officer making arrest—Personal perquisite.

SEC. 146. When an arrest for a violation of this act is made by the commissioner, or a warden and the defendant is convicted, there shall be taxed as costs in favor of the officer making the arrest the same fees as a constable is entitled to in a case of misdemeanor, and if collected from the defendant shall be paid over to such officer and shall be a personal perquisite for which he need not account, but no such fees shall be allowed in case of acquittal, nor shall the county or state be liable for such fees in any event.

Legislation. Sec. 2870. Act 1899 p. 221 § 5 Division H. (now M.) cited under § 2725.

2871. Fees of officers making seizure and sale.

SEC. 147. In case of a seizure and sale of game or fish taken or held in violation of this act, the officer making the same shall be entitled to the mileage allowed to a constable for serving a writ of replevin, and the reasonable cost of transporting the game or fish to the place of sale, and \$3 per day for each day actually and necessarily spent in making the sale, which sums he may deduct from the proceeds of sale, but in no event shall the county or state be liable for any deficiency, and such fees when earned by the commissioner or a warden shall be a personal perquisite for which he need not account, but when such fees are collected from the proceeds of sale no other expenses shall be allowed any officer on account of the seizure, transportation or sale.

Legislation. Sec. 2871. Act 1899 p. 221 § 6 Division H. (now M.), cited under § 2725.

2872. Officer report seizure or sale to commissioner.

SEC. 148. In all cases the officer making a seizure or sale shall within ten days thereafter report all the particulars thereof and an itemized statement of the proceeds, expenses and fees and

the disposition thereof, and pay the remainder of the proceeds, if any, to the commissioner.

Legislation. Sec. 2872. Act 1899 p. 221 § 7 Division H. (now M.) cited under § 2725.

2873. Wardens report violations to commissioner.

SEC. 149. Every warden shall in the month of December of each year, and at such other times as the commissioner may require, report to the commissioner as to all violations of and prosecutions under this act occurring in his district, together with such other information as the commissioner may require.

Legislation. Sec. 2873. Act 1899 p. 222 § 8 Division H. (now M.) cited under § 2725.

XII. DIVISION N. (G) PENALTIES—PROSECUTIONS—FINES.

Section.

- 2874. Attempts deemed violations—Corporations liable.
- 2875. Failure to perform deemed a violation.
- 2876. Penalty for dynamiting fish or killing buffalo.
- 2877. Penalty for other violations of act.
- 2878. Imprisonment for non-payment of fine.
- 2879. Commencement of prosecution—Jurisdiction of courts.
- 2880. Accused entitled to jury—Appeals.
- 2881. District attorneys prosecute.
- 2882. Participant in violation may testify as witness.
- 2883. Disposition of fines collected.
- 2884. Report of trials to commissioner.
- 2885. "Said act" construed.

2874. Attempts deemed violation—Corporations liable.

SEC. 150. Every attempt to violate any provision of this act shall be punishable to the same extent as an actual violation thereof, and any such attempt or violation by an agent, clerk, officer, or employe while acting for a corporation, shall render

[The act of 1903 provided a division G, sections 2853-2846, which can not be considered as superseding division G. of the 1899 act, which is preserved in this compilation as division N, sections 2874-2884.]

such corporation liable also, and an accessory may in all cases be prosecuted and punished as a principal.

Legislation. Sec. 2874. Act 1899 Division G. § 1, cited under § 2725.

2875. Failure to perform deemed a violation.

SEC. 151. The failure by any person or officer to perform any act, duty or obligation enjoined upon him by this act shall be deemed a violation thereof.

Legislation. Sec. 2875. Act 1899 Division G. § 2, cited under § 2725.

2876. Penalty for dynamiting fish or killing buffalo.

SEC. 152. Every person using dynamite or other explosive, or any poisonous or stupefying substance, or pursuing, taking, wounding, killing or having in possession any bison or buffalo, in violation of this act, shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment in the penitentiary not less than six months nor more than two years, or by both such fine and imprisonment.

Legislation. Sec. 2876. Act 1899 Division G. § 3, cited under § 2725.

2877. Penalty for other violations of act.

SEC. 153. Every person or officer violating any of the provisions of this act, otherwise than as contemplated in section 3 of this division, shall be guilty of a misdemeanor and be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment in the county jail not less than ten days, nor more than six months, or by both such fine and imprisonment.

[Section 3 above referred to is section 2876.]

Legislation. Sec. 2877. Act 1903 p. 244 Division G. § 4, amending Act 1899 p. 217 § 4, cited under § 2725. The amendment raised the minimum fine from \$10 to \$25.

2878. Imprisonment for non-payment of fine.

SEC. 154. Every person convicted and fined under this act shall be imprisoned until the fine and costs are paid, and shall not be discharged therefrom on account of his inability to pay the

same, until he shall have been actually imprisoned one day for each \$5 of the fine.

Legislation. Sec. 2878. Act 1899 p. 217 Division G. § 5, cited under § 2725.

2879. Commencement of prosecution—Jurisdiction of courts.

SEC. 155. Prosecutions under this act may be commenced either by indictment, complaint or information, and district and county courts and justices of the peace in their respective counties shall have concurrent original jurisdiction of all offenses under this act, except those contemplated in section 3 of this division, of which justices of the peace shall not have jurisdiction, otherwise than as committing magistrates.

[Section 3 above referred to is section 2876.]

Legislation. Sec. 2879. Act 1899 Division G. § 6, cited under § 2725.

2880. Accused entitled to jury—Appeals.

SEC. 156. The accused shall be entitled to a jury as in other criminal cases, and an appeal shall lie from a justice of the peace as in cases of assault and battery. Appeals from and writs of error to the district and county courts shall lie as in other criminal cases.

[For appeals from justice court see section 3869.]

Legislation. Sec. 2880. Act 1899 Division G. § 7, cited under § 2725.

2881. District attorneys prosecute.

SEC. 157. It shall be duty of each district attorney to prosecute all violations of this act, occurring within his district, that may come to his knowledge, or when so requested by the commissioner or any officer charged with its enforcement, the same at all times to be subject to the supervision and control of the commissioner.

Legislation. Sec. 2881. Act 1899 Division G. § 8, cited under § 2725.

2882. Participant in violation may testify as witness.

SEC. 158. In any prosecution under this act, any participant in a violation thereof, when so requested by the district attorney,

commissioner, warden or other officer instituting the prosecution, may testify as a witness against any other person charged with violating the same, and his evidence so given shall not be used against him in any prosecution for such violation.

Legislation. Sec. 2882. Act 1899 Division G § 9, cited under § 2725.

2883. Disposition of fines collected.

Sec. 159. All moneys collected for fines under this act shall be immediately paid over by the justice or clerk collecting the same, as follows: One third into the treasury of the county where the offense was committed, one third to the commissioner, and one third to the person instituting the prosecution.

Provided. That if the person instituting the prosecution shall fail for ten days after such collection and due notice thereof, to demand the portion to which he is entitled, the same shall be paid to the commissioner and the right of such person thereunder shall be deemed forfeited.

The commissioner, any warden or officer instituting a prosecution shall be entitled to a share in the fines collected the same as any other person, and it shall be a personal perquisite for which he need not account.

Legislation. Sec. 2883. Act 1899 Division G. § 10, cited under § 2725.

2884. Report of trials to commissioner.

Sec. 160. It shall be the duty of every justice of the peace and clerk of a court before whom any prosecution under this act is commenced or shall go on appeal, and within twenty days after the trial or dismissal thereof, to report in writing the result thereof and the amount of fine collected, if any, and the disposition thereof to the commissioner at Denver.

Legislation. Sec. 2884. Act 1899 Division G. § 11, cited under § 2725.

2885. "Said act" construed.

Sec. 161. The words "said act," wherever used herein, refer to the act to which this is amendatory, and the penal provisions of said act shall be applicable to this act the same as if this act

had been incorporated therein and passed as a part thereof, and all acts or parts of acts inconsistent with this act are hereby repealed.

[The act above referred to is the amendatory act of 1903.]

Legislation. Sec. 2885. Act 1903 p. 244 § 9.

XIII. BIRDS—NESTS AND EGGS.

Section.

2886. Shall not kill or possess birds—Except game birds.

2887. Shall not destroy bird nests.

2888. Penalty for violation of above two sections.

2889. Collecting for scientific purposes.

2890. Permit to collect for scientific purposes—Bond.

2891. Permit not transferable.

2892. Birds not protected.

2893. Form of permit to collect.

2886. Shall not kill or possess birds—Except game birds.

SEC. 162. No person shall, within the state of Colorado, kill or catch, or have in his or her possession, living or dead, any wild bird other than a game bird, or purchase, offer, or expose for sale, transport, or ship within or without the state, any such wild bird after it has been killed or caught. No part of the plumage, skin, or body of any bird protected by this section shall be sold or had in possession for sale except as permitted by this act. For the purposes of this act the following only shall be considered game birds: The anatidae, commonly known as ducks, geese, brants, cranes, and swan; the rallidae, commonly known as rails, gallinules, coots, and mud hens; the limicolae, commonly known as shore birds, phalaropes, avocets, stilts, woodcocks, snipes, dowitchers, sandpipers, sanderlings, godwits, yellow-legs, willets, curlews, plovers, kill-deers, and turnstones; the gallinae, commonly known as quails, partridges, grouse, prairie chickens, pheasants, and wild turkeys; the columbae, commonly known as wild pigeons and doves.

[For further exceptions see section 2759.]

Legislation. Sec. 2886. Act 1903 p. 227 § 1, entitled:

AN ACT

To Protect Birds, and Their Nests and Eggs.

2887. Shall not destroy bird nests.

SEC. 163. No person shall, within the state of Colorado, take or needlessly destroy the nest or the eggs of any wild bird nor shall have such nests or eggs in his or her possession, except as permitted by this act.

Legislation. Sec. 2887. Act 1903 § 2, cited under § 2886.

2888. Penalty for violation of above two sections.

SEC. 164. Any person who violates any of the provisions of sections 1 and 2 of this act shall be guilty of a misdemeanor, and shall be liable to a fine of not more than twenty-five dollars for each bird, living or dead, or part of a bird, or nest, or set of eggs, or part thereof, possessed in violation of this act, or to imprisonment for not more than ten days, or both, at the discretion of the court.

[Sections 1 and 2 referred to are sections 2886 and 2887.]

Legislation. Sec. 2888. Act 1903 § 3, cited under § 2886.

2889. Collecting for scientific purposes.

SEC. 165. Sections 1, 2 and 3 of this act shall not apply to any person holding a permit giving the right to take any wild birds, their nests or eggs for scientific purposes, as provided for in section 5 of this act.

[Sections 1, 2, 3 and 5 referred to are sections 2886-2888, and section 2890.]

Legislation. Sec. 2889. Act 1903 § 4, cited under § 2886.

2890. Permit to collect for scientific purposes—Bond.

SEC. 166. Permits shall be granted by the state game and fish commissioner, or by the governor, to any properly accredited person of the age of eighteen years or over, authorizing the holder thereof to collect any wild birds, their nests, and eggs, for strictly scientific purposes only. In order to obtain such permit the applicant for same must present to the person having the power to

grant said permit written endorsement from an incorporated state society of natural history, certifying to the good character and fitness of said applicant to be intrusted with such privilege; must pay to said person fifty cents to defray the necessary expenses attending the granting of such permits; and must file with said person a properly executed bond, in the sum of one hundred dollars, signed by two responsible citizens of the state as sureties, or issued by some responsible surety company. On proof that the holder of such a permit has killed any bird, or taken the nest or eggs of any bird, for other than scientific purposes, his bond shall be forfeited to the state, and the permit become void, and he shall be further subject for each such offense to the penalties provided therefor in section 3 of this act. The fees collected under this act shall go into the state game fund.

[Section 3 referred to is section 2888.]

Legislation. Sec. 2890. Act 1903 § 5, cited under § 2886.

2891. Permit not transferable.

SEC. 167. The permits authorized by this act shall be in force for one year only from the date of their issue and shall not be transferable.

Legislation. Sec. 2891. Act 1903 § 6, cited under § 2886.

2892. Birds not protected.

SEC. 168. English or European house sparrows (*Passer domesticus*), sharp-shinned hawks (*Accipiter velox*), Cooper's hawks (*Accipiter cooperi*), goshawks (*Accipiter atricapillus*), duck hawks (*Falco peregrinus anatum*), great horned owls (*Bubo virginianus subarcticus*), Pinon jays, magpies, blue jays, and eagles, their nests, or eggs, are not included among the birds, their nests, or eggs protected by this act.

Legislation. Sec. 2892. Act 1903 § 7, cited under § 2886.

2893. Form of permit to collect.

SEC. 169. Form for scientific permit to collect birds and their nests and eggs:

Denver, Colorado,.....190..

No.....

I. having received satisfactory evidence that M. is engaged in the collection of wild birds, birds' nests and eggs for scientific purposes, and having received from h.. the fee and bond as provided for by this act, do hereby grant h.... permission to collect any wild birds, their nests and eggs, for strictly scientific purposes only, in accordance with the provisions of the law enacted therefor; and in case of wanton destruction of birds, their nests or eggs, or killing birds for other than strictly scientific purposes, by the said, this permit shall be revoked by the grantor thereof, or his successor, his bond shall be forfeited to the state and he shall be subject to the penalties provided in sections 3 and 5 of this act.

This permit expires the..... day of....., nineteen hundred....., and is not transferable. The holder thereof is not authorized to collect specimens in defiance of local laws or regulations, nor in violation of laws against trespass on private property.

.....

(SEAL)

.....

[Sections 3 and 5 above referred to are sections 2888 and 2890.]

Legislation. Sec. 2893. Act 1903 § 8, cited under § 2886.

This section has no sub-section number and appears in the form of an appendix to the last section of the Act.

The only legislation before 1867 on the subject of fish or game was the Act of 1861 p. 116, R. S. p. 631, which forbade the netting or trapping of trout.

In 1867 p. 68 was passed an Act making a close season on game birds, elk, deer, mountain sheep and antelope between January 15 and August 15. In the revision of 1868 p. 345 this Act was repealed except as to prairie chickens, quail and pheasants. (The only bird in Colorado which might be called a pheasant is the ruffed grouse found in the northwest part of the state.)

There was an Act in 1870 p. 76 against dynamiting or drugging the water to take fish, part of the Act local to Park and Lake counties.

Amended and made general by Act 1872 p. 133. Act of 1870 p. 77 was for the protection of certain game and all insectivorous birds.

An act protecting game birds and animals and insectivorous birds was passed in 1872 p. 134, amended and in part repealed by Act 1874 p. 163.

Fishing in private ponds or streams used for fish breeding was forbidden by Act 1874 p. 161.

All prior acts protecting fish were repealed or abrogated by the fish chapter of 1877, G. L. §§ 1216-1228. The game chapter of the G. L. was also a codifying Act of 1877 which probably abrogated all the prior game statutes. §§ 1282-1289. Sec. 1288 gave a bounty on hawks, a provision of very doubtful benefit.

The G. S. fish chapter reprints the G. L. chapter with amendments of 1879 p. 74 and 1881 pp. 126 and 127.

The office of state fish commissioner was created by said Act of 1881 p. 125 and on page 124 was an Act for the selection of the first state fish hatchery.

The game chapter of the G. S. was a reprint of the G. L. chapter with the amendment of two sections Act 1883 p. 199 and the addition of a section by Act 1872 p. 135 concerning waste of game food, which had been omitted in the G. L. revision. G. S. § 1550.

There continued to be repeated amendments of both fish and game laws to-wit: Act 1885 pp. 223, 235, 236, 237. Act 1887 pp. 269, 267, 446. Act 1889 pp. 168, 170, 172, 174 and 175 which last act of 1889 was limited to ducks and geese. Act 1891 pp. 224, 229 and 232.

There were amendments by Act 1893 pp. 269, 270, 275 and 280.

Sec. 21 on p. 280 repealed the whole of the game chapter of the G. S. and all its amendments.

Act 1889 p. 170 was the first Act to allow the appointment of game wardens.

In 1897 p. 36 the department of forestry, game and fish was created. Its § 53 repealed the fish chapter of the G. S. and enumerated and repealed eleven separate game and fish Acts enacted between 1885 and 1893 with the sweeping clause "and the several acts amendatory of said acts." It was probably intended to be a substitute for all the fish and game legislation. This Act was substituted by Act 1899 p. 184.

CHAPTER LIX.

GENERAL ASSEMBLY.

Section.

- 2894. Term of members.
 - 2895. Call of houses to order.
 - 2896. Clerks file members' certificates—Make roll—Officers.
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 - 2906. Compensation of members.
 - 2907. Senate and house journals published.
 - 2908. Disposition of journals.
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2894. Term of members.

SEC. 1. The regular term of office of members of the general assembly shall commence on the first Wednesday of December next after their election.

Legislation. Sec. 2894. G. L. § 937. G. S. § 1161.

The text merely repeats the date of opening as fixed by Const. Art. V § 7. By the Organic Act the legislative body was styled the Legislative

[For apportionment of members see section 130.]

[For constitutional provisions regarding General Assembly see Constitution, art. 5.]

[For executive authority over general assembly, see Constitution, art. 4, sections 8-12.]

Assembly. Code p. 89. The governor was to appoint the date of first meeting and thereafter the body was to fix its own terms. P. 91.

The first session began September 9, 1861, and at that session the next session was fixed to begin on first Monday of June, 1862, and annually thereafter on the first Monday in February. Act 1861 p. 170 § 1 Changed to first Monday of January by Act 1864 p. 161.

By Act 1861 p. 170 annual sessions were provided for, as the organic act impliedly called for such annual meetings. The 1862 session was held, but in 1863 no session was called there being no appropriation for its expenses. Sessions were held each year from 1864 to 1868. The organic act was amended to call for biennial terms (Code p. 105) and in accord with the amendment by Act of 1868 the session was made biennial, R. S. p. 419 § 5, and the legislative assembly accordingly met in 1870 and every even year thereafter until and including 1876. See notes to § 451.

2895. Call of houses to order.

SEC. 2. At 12 o'clock noon of the day of the meeting of the general assembly the chief clerk or secretary of the next preceding session, or in case of his absence, some person holding a certificate issued by the secretary of state under the authority of the state canvassing board as a member, shall call the house to which he belongs to order and the persons present holding certificates issued by the secretary of state as members thereof and whose names are on the list or roll furnished as provided by law, by the secretary of state shall elect a clerk for the time being.

Legislation. Sec. 2895. Act 1893 p. 282 § 1, amending Act 1883 p. 201 G. S. § 1575, which amended G. L. § 1290. R. S. p. 419 § 1. Act 1861 p. 165 § 1.

2896. Clerks file members' certificates—Make roll—Officers.

SEC. 3. The clerks of each house shall file the certificates presented by the members, each for his own house, and make a roll of the members who thus appear to be elected, and the persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being.

[Secretary of state certify list of members. Section 2283.]

Legislation. Sec. 2896. G. L. § 1291. G. S. § 1576. R. S. p. 419 § 2 Act 1861 p. 165 § 2.

2897. Committee on credentials—Permanent organization.

SEC. 4. When the houses are temporarily organized, they shall elect a committee of three, on the part of each house, by ballot, which committee shall report upon the credentials of those

claiming to be elected members of their respective houses; and when such report is made, those reported as elected shall proceed to the permanent organization of their respective houses; and each house shall be the sole judges of the election returns and qualifications of its own members.

Legislation. Sec. 2897. G. L. § 1292. G. S. § 1577. R. S. p. 419 § 3. Act 1861 p. 165 § 3.

2898. Members shall not be questioned.

SEC. 5. No members of the legislative assembly shall be questioned in any other place for any speech or word spoken in debate in either house.

Legislation. Sec. 2898. G. L. § 1293. G. S. § 1578. R. S. p. 419 § 4. Act 1861 p. 165 § 4.

2899. Legislative employees:

SEC. 6. Until otherwise provided by law, the officers and employes of the respective houses of the general assembly of Colorado may be, and shall not exceed the following:

OF THE SENATE:

A secretary, assistant secretary, reading clerk, bill clerk, docket clerk, sergeant-at-arms, two assistant sergeants-at-arms, chaplain, chief enrolling clerk, with not more than one assistant enrolling clerk, chief printing clerk, with not more than one assistant printing clerk, two messengers, one doorkeeper and one assistant doorkeeper, janitor for chamber, janitor for committee rooms, one janitor for cloak room and gallery, telephone messenger, night watchman, matron for women's gallery, four pages, and clerks for each of the following named committees, as follows: Judiciary, one; revision, two; finance, one; corporations and railroads, and banking and insurance, one jointly. The committees on agriculture and irrigation, and education and educational institutions, one jointly; and four other committee clerks to be assigned by the president of the senate to the remaining committees, as required.

OF THE HOUSE:

A chief clerk, an assistant clerk, reading clerk, bill clerk,

docket clerk, sergeant-at-arms, three assistant sergeants-at-arms, chaplain, chief enrolling clerk, with not more than one assistant enrolling clerk, chief printing clerk, two assistant printing clerks, two messengers, one doorkeeper, two assistant doorkeepers, one janitor for chamber, one janitor for committee rooms, one janitor for cloak room and gallery, telephone messenger, one night watchman, one matron for women's gallery, six pages, and clerks for each of the following named committees: Judiciary, one; revision and constitution, two; finance, ways and means, corporations, agriculture and irrigation, and appropriations, each one; and four additional committee clerks to be assigned by the speaker to the remaining committees as may be required.

Legislation. Sec. 2899. Act 1899 p. 245 § 1, entitled:

AN ACT

To Prescribe the Number, Duties and Compensation of the Officers and Employees of the General Assembly.

This Act necessarily repealed Act of same session on same subject. 1899 p. 223. But the Act of 1899 p. 223 was repealed in terms by Act of 1907 p. 546. Both of the 1899 Acts amended G. S. § 1579, G. L. § 1294.

CITATIONS.

This section as passed originally could not be ignored by a subsequent legislature without modifying or repealing it.—*Peo. v. Spruance*, 8 C. 312, 6 P. 832.

2899-A. Additional employes.

SEC. 6a. From and after the passage of this act additional officers and employes of the general assembly while the same is in session shall be provided for as follows:

Legislation. Sec. 2899A. Act 1909 p. 176 § 2, entitled:

AN ACT

Providing for the Appointment and Compensation of a President's Stenographer for the Senate, a Senate Reporter and An Assignable Clerk for the Senate; a House Reporter, One Speaker's Stenographer for the House, One Assignable Stenographer, and Two Additional Clerks for the Enrollment Committee, and One Mail Clerk for the House of Representatives, and a Clerk of Supplies to be Appointed by the Lieutenant Governor, the Speaker of the House of Representatives and Secretary of State.

2899-B. Positions and pay in senate.

SEC. 6b. There shall be appointed by the president of the senate one stenographer for the president of the senate, at four dollars (\$4.00) per day; one senate reporter at five dollars (\$5.00) per day, and one assignable clerk for the senate at four dollars (\$4.00) per day.

Legislation. Sec. 2899B. Act 1909 § 3, cited under § 2899A.

2899-C. Positions and pay in house—Enrolling clerks.

SEC. 6c. There shall be appointed by the speaker of the house of representatives, with the consent of a majority of the members thereof, one house reporter at five dollars (\$5.00) per day, one stenographer for the speaker at four dollars (\$4.00) per day, one assignable stenographer at four dollars (\$4.00) per day and one mail clerk at three dollars (\$3.00) per day. *Provided*, That at any time during the last thirty days of the session, two additional clerks for the enrollment committee at four dollars (\$4.00) per day each may be appointed, provided the house, by resolution, has declared that an emergency exists and that there is need for such employees. *Provided, further*, That all clerks so appointed under the provisions of this act, must be competent stenographers and typewriters.

Legislation. Sec. 2899C. Act 1909 § 4, cited under § 2899A.

2899-D. Supply clerk.

SEC. 6d. There shall be appointed by the lieutenant governor, the speaker of the house of representatives and the secretary of state, one clerk to have charge of the supplies of the general assembly who shall receive as compensation therefor five dollars (\$5.00) per day.

Legislation. Sec. 2899D. Act 1909 § 5, cited under § 2899A.

Secs. 1 and 6 were appropriation sections and § 7 was the Emergency clause.

2900. Qualifications of employes of senate.

SEC. 7. All clerks of the senate, except the reading clerk,

bill clerk, docket clerk, chief and assistant printing clerks, clerk of judiciary committee must be competent stenographers and typewriters.

Legislation. Sec. 2900. Act 1905 p. 240 § 1, entitled:

AN ACT

Concerning the Employees of the General Assembly.

2901. Qualifications of employees of house.

SEC. 8. All clerks of the house of representatives, except the chief clerk, reading clerk, bill clerk, docket clerk, chief and assistant printing clerks and clerk of judiciary committee must be competent stenographers and typewriters.

Legislation. Sec. 2901. Act 1905 § 2, cited under § 2900.

2902. Revision committee, duties—Qualification of employees—How selected.

SEC. 9. All bills referred to the revision committee of either house shall be engrossed by that committee, and reported for third reading, revised and engrossed without reference to any other committee.

All clerks of the revision and enrollment committees, except detailed clerks to such committees, shall be expert typewriters, and the work of engrossment and enrollment may be done by typewriter with indelible ribbon. All enrolled bills shall be made in duplicate, and the duplicate shall be filed with the state auditor.

The president of the senate or speaker of the house may, at the request of the revision or enrolling committee, when the labor required to be done by the clerks of said committees can not be done by the said clerks, detail any other competent clerk of the senate or house to assist in the labor to be done by said committee: *Provided*, That in case of an emergency during the last ten days of the session the president of the senate and the speaker of the house may each employ not to exceed two enrolling clerks.

All such officers and employees shall be selected by the house employing them, and they shall perform the duties usually performed by like officers and employees, and such other duties as may

be required of them by the house employing them. All clerks herein provided for shall be assignable and all printing clerks shall be skilled and competent proofreaders.

Legislation. Sec. 2902. Act 1899 p. 246 § 2, cited under § 2899.

2903. Compensation of officers and of employes.

SEC. 10. The secretary of the senate and chief clerk of the house shall receive \$6 per day; assistant secretary and assistant clerk, each \$5 per day; reading clerks, \$5 per day; bill clerks, \$4 per day; docket clerks, \$4 per day; sergeant-at-arms, \$5 per day; assistant sergeant-at-arms and night watchman, \$4 per day; messengers, doorkeepers, assistant doorkeepers and janitors, \$3 per day; chaplains, \$3 per day; pages, \$2 per day; chief revision clerks, chief enrolling clerks, chief printing clerks, clerks of judiciary committees and clerks of revision and finance committees, each \$4 per day; all other committee clerks the sum of \$4 per day; matrons for women's gallery, \$3 per day; *Provided*, That the pay of all officers and employes shall cease and determine upon final adjournment of the legislature, except the pay of the secretary of the senate, assistant secretary of the senate, clerk and assistant clerk of the house, who shall each be allowed pay for ten days after such final adjournment for completing the records of the proceedings of the session.

Legislation. Sec. 2903. Act 1899 § 3, cited under § 2899.

CITATIONS.

The two houses can not by a separate resolution fix the compensation of employes at a higher rate than allowed by statute.—*Peo. v. Spruance*, 8 C. 312, 6 P. 832.

Mandamus will lie to compel the auditor to issue a warrant to the assistant secretary of the senate—necessary pleadings.—*Lowell v. Bonney*, 14 A. 232, 60 P. 832.

2904. Certificates of service—Computation—Warrant.

SEC. 11. Each officer and employe at each session of the general assembly shall receive from the presiding officer of the house to which he belongs a certificate setting forth the number of days of service rendered by such officer or employe, such time

of service to be computed from the day of his or her election or appointment until the end of his or her term of service; and such certificate, when presented to the auditor, shall entitle the holder thereof to a warrant for the amount due, and the auditor shall draw his warrant on the treasurer accordingly.

Legislation. Sec. 2904. G. L. § 1297. G. S. § 1582.

CITATIONS.

This section gives employees authorized by resolution the same status as the rest.—*Peo. v. Spruance*, 8 C. 316, 6 P. 836.

Mandamus lies to compel auditor to issue warrant to an officer of the senate. Certificate of presiding officer as to services is conclusive.—*Lowell v. Bonney*, 14 A. 236, 60 P. 832.

2905. Members' certificates—Warrants.

SEC. 12. Each member of the general assembly shall receive from the presiding officer of the house to which he belongs a certificate setting forth the number of days of attendance of such member, and the amount due for mileage, and such certificate, when presented to the auditor, shall entitle the holder thereof to a warrant for the amount due, and the auditor shall draw his warrant accordingly.

Legislation. Sec. 2905. G. L. § 1300. G. S. § 1583.

2906. Compensation of members.

SEC. 13. That hereafter each member of the general assembly of this state shall receive as compensation for his services the sum of four dollars for each day's attendance, and fifteen (15) cents for each mile necessarily traveled in going to and from the seat of government by the most usually traveled route.

[This section is amended by constitution, art. 5, section 6.]

[When increase of salary forbidden, Constitution, art. 5, section 9.]

Legislation. Sec. 2906. G. L. § 1302. G. S. § 1584.

By article 5 § 6 the per diem was \$4 and the mileage 15 cents. Session not to last longer than 40 days, except the first session. Amended in 1884 to \$7, same mileage, and session enlarged to 90 days. By amendment 1910 (Act 1909 p. 314) the pay is \$1,000 for the biennial session, with actual traveling expenses.

The pay under the territory was originally fixed by the organic Act at \$3 per day and mileage. Code p. 96. Raised to \$6 and same mileage by amendments pp. 106, 109.

2907. Senate and house journals published.

SEC. 14. The secretary of state is authorized and it is hereby made his duty to have five hundred copies of each of the journals of the senate and house of representatives published as soon as practicable after the adjournment of each general assembly.

The secretary and assistant secretary of the senate, and the clerk and assistant clerk of the house of representatives, respectively, shall cause the engrossing clerks and their assistants, and such other assistants as may be assigned by the president of the senate and speaker of the house, to keep the respective journals copied from day to day until adjournment and checked up to the journals, and said secretary of the senate and clerk of the house shall, within ten days after the adjournment of the general assembly, deposit with the secretary of state the original journals of their respective branches, together with a complete copy of the same ready for printing, except indexing, and said secretary of the senate and clerk of the house shall not receive any warrant for their last twenty days' services as such secretary and clerk, until they shall have deposited such originals and copies of the journals as above specified. Should the work of the last days of the general assembly be such that the clerical force mentioned will, with their other duties, be unable to keep the journals up to date of adjournment, the president of the senate and speaker of the house may each detail not to exceed four competent and efficient clerks to remain for not to exceed four days after adjournment and assist the secretary and chief clerk in completing said journals. Said detailed clerks to receive not to exceed four (4) dollars per diem, for such work, and not to receive any pay until the secretary of the senate and clerk of the house certify that the work is completed. Together with such copies, there shall also be deposited by such secretary and clerk a brief index of all bills, memorials and resolutions of the senate and house, respectively, as well as the complete reference file of each house, which is ordinarily and is hereby required to be prepared by such secretary and clerk as soon as practicable after the expiration of the time for the introduction of bills in each general assembly. It shall be the duty of the secretary of state to carefully compare said originals with the copies of said journals, making corrections where corrections

are needed, and have such copies of such journals so corrected, together with such indexes and reference files, printed, and when the proof sheets have been corrected the same shall be indexed by the secretary of state. The secretary of state will then have said journals and index published and shall certify to the correctness of the copies of the original journals so published, which certificate shall be included in and made a part of such publications. The said journals, when printed and certified as aforesaid, as well as all former printed volumes of the senate and house journals of the general assemblies of the state of Colorado, purporting to have been published by authority of the state, shall be taken and deemed to have been published by authority of the state of Colorado, and shall be taken and held as prima facie evidence of the original records. *Provided*, For the preparation of the journals of the senate and house of representatives of the twelfth general assembly, the secretary of the senate shall receive three hundred dollars and the clerk of the house of representatives four hundred dollars.

[For printing of daily journals see section 5227.]

Legislation. Sec. 2907. Act 1899 p. 240 § 1, entitled:

AN ACT

Concerning the Compiling, Indexing, Publication and Distribution of the Journals of the Senate and House of Representatives of the State of Colorado.

CITATIONS.

The introduction in evidence of the journal which fails to show the entry of the ayes and noes votes makes a prima facie case and raises the presumption that there was no final passage of the bill.—*Rio Grande S. Co. v. Catlin*, 40 C. 454, 94 P. 324.

2908. Disposition of journals.

SEC. 15 The secretary of state shall deliver one copy of each of the said journals to the county clerks of the several counties of the state, and the county clerks shall keep them on file for public inspection, and, also, one copy each to the members of the general assembly, and one copy to each of the elective state officers, and to each district and county judge in the state.

Legislation. Sec. 2908. Act 1899 § 2, cited under § 2907.

2909. Cost of publication.

SEC. 16. The services herein required to be performed by the secretary of state, shall be done and performed by him as one of the duties of his office and without any extra fee, charge or compensation whatsoever. The cost of the publication of said journals shall be paid out of any money available and appropriated for the payment of the incidental and contingent expenses of the general assembly.

[Sections 2907 to 2909 repeal L. '93, p. 266, sections 1 and 2.]

[For compilation, printing and disposition of session laws see sections, 5226, 5255 and 5256.]

Legislation. Sec. 2909. Act 1899 § 3, cited under § 2907.

CHAPTER LX.

GUARDIAN AND WARD.

Section.

- 2910. Orphan minors choose guardian.
- 2911. Court issue notice—Minor neglecting, court appoint.
- 2912. Wife joint guardian with husband—Custody of child disposed of by will or deed.
- 2913. Powers and duties of testamentary guardian.
- 2914. May bring actions—Control of ward and estate.
- 2915. Charitable corporations may become guardians.
- 2916. Petition of charitable organization for guardianship.

2910. Orphan minors choose guardian.

SEC. 1. Courts of probate, in their respective counties, shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years.

Legislation. Sec. 2910. Act 1861 p. 344 § 1. R. S. p. 346 § 1. G. L. § 1303. G. S. § 1585.

2911. Court issue notice—Minor neglecting, court appoint.

SEC. 2. Whenever it shall be represented to said court that any orphan minor above the age of fourteen years has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if such minor were under the age of fourteen years.

Legislation. Sec. 2911. Act 1861 p. 344 § 2. R. S. p. 346 § 2. G. L. § 1304. G. S. § 1586.

[See also Chapter 24, Children.]

[For appointment, qualification and duties of guardian see Chapter 157, Wills and Estates.]

2912. Wife joint guardian with husband—Custody of child disposed of by will or deed.

SEC. 3. Every married woman is hereby constituted and declared to be the joint guardian of her children with her husband, with equal powers, rights and duties in regard to them with the husband. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born or of a child under the age of twenty-one years and unmarried, may by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority, or for any less time, to any proper person.

[Wife must consent to adoption of child. Section 527.]

Legislation. Sec. 2912. Act 1861 p. 348 § 17. R. S. p. 350 § 17. G. L. § 1319. G. S. § 1601. Amended by Act 1895 p. 186. The Act before amendment read:

Sec. 17. Every father of sound mind and memory of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his last deed or will duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being sole, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

CITATIONS.

Upon the death of a parent to whom a decree of divorce awards custody of children the other parent becomes entitled to the custody unless disqualified.—*Wilson v. Mitchell*, (48 C. 455 111 P. 27.

2913. Powers and duties of testamentary guardian.

SEC. 4. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor: *Provided*, That the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will as aforesaid.

Legislation. Sec. 2913. Act 1861 p. 348 § 18. R. S. p. 350 § 18. G. L. § 1320. G. S. § 1602.

2914. May bring actions—Control of ward and estate.

SEC. 5. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will, as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this state.

Legislation. Sec. 2914. Act 1861 p. 349 § 19. R. S. p. 350 § 19. G. L. § 1321. G. S. § 1603.

CITATIONS.

Powers and duties of statutory guardians considered.—*Fillmore v. Wells*, 10 C. 228, 239, 15 P. 343.

2915. Charitable corporations may become guardians.

SEC. 6. Whenever any minor shall become dependent upon any charitable corporation, the county court of the county where such minor resides may appoint such charitable corporation the guardian of the person of such minor. Upon being appointed guardian, such corporation shall have the custody of the person of such minor during the continuance of his or her dependence. No bond shall be required of any such corporation so appointed guardian.

[Trust company may act as guardian. Section 305.]

Legislation. Sec. 2915. Act 1885 p. 248 § 1, entitled:

AN ACT

To Provide for the Temporary Guardianship of Poor Minors.

2916. Petition by charitable organization for guardianship.

SEC. 7. Any charitable corporation supporting any minor, in whole or in part, may apply to the county court of the county for the guardianship of the person of such minor. The petition shall set forth the circumstances of such dependence, the name, age and sex of the dependent minor, and whether such minor has parents living, and who and where, and whether he has any estate.

and if so, the amount thereof, and of what it consists. Upon filing such petition, the county judge shall inquire into the matter, and, if it shall appear that such minor is dependent upon such charitable corporation, in whole or in part, and is receiving support therefrom, said corporation shall be appointed guardian of the person of the said minor, and the parents, or other legal guardian, shall have no control and exercise no authority over the person of such dependent minor during the continuance of his or her dependence.

[Superintendent of poor ex-officio guardian, when. Section 138.]

[When humane society appointed guardian. Section 606.]

Legislation. Sec. 2916. Act 1885 § 2, cited under § 2915.

CHAPTER LXI.

HABEAS CORPUS.

Section.

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2917. Petition for writ—Service—Return.

SEC. 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district courts, in term time, or any judge thereof in vacation, for a writ of habeas corpus, which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall

be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of habeas corpus, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved; which said writ, if issued by the court, shall be under the seal of the court, if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith; to the intent that no officer, sheriff, jailer, keeper, or other person to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be endorsed with these words, "By the habeas corpus act;" and whenever the said writ shall, by any person, be served upon the sheriff, jailer or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under-officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under-officers or deputies, shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and endorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

Legislation. Sec. 2917. Act 1861 p. 353 § 1. R. S. p. 352 § 1. G. L. § 1323. G. S. § 1609.

CITATIONS.

The petition must contain the evidence before the magistrate.—*Garvin, In re*, 3 C. 67.

The writ will not issue to enable the court to review a judgment that is merely irregular or erroneous.—*Ex Parte Farnham*, 3 C. 545. *Packer, In re*, 18 C. 525, 33 P. 578. *Tyson, In re*, 21 C. 83, 39 P. 1095. *Martin v. District Court*, 37 C. 115, 86 P. 83.

Where a law in force at the time a larceny was committed was repealed without a saving clause a subsequent conviction was void and the writ would lie.—*Hirschburg v. Peo.*, 6 C. 145.

Habeas corpus is the proper remedy where a defendant not admitted to bail has not been tried by the second term under section 2926.—*Garvey, In re*, 7 C. 506, 4 P. 760. *Cummins v. Peo.*, 4 A. 72, 34 P. 735.

Justices of the supreme court acting singly out of term are without jurisdiction to issue the writ.—*Garvey, In re*, 7 C. 506, 4 P. 760.

The district courts are expressly given general jurisdiction to issue the writ.—*Cooper v. Peo.*, 13 C. 368, 22 P. 800.

District court may not by habeas corpus release a person convicted by a justice, on the ground that the ordinance was unconstitutional. The constitutionality can not be tested by habeas corpus.—*Peo. v. Dist. Court*, 33 C. 328, 80 P. 888.

The supreme court has the power to issue the writ of certiorari to review a judgment in a habeas corpus proceeding.—*Martin v. District Court*, 37 C. 113, 86 P. 83.

A district court may not by habeas corpus or otherwise modify a supersedeas of the supreme court.—*Peo. v. District Court*, 8 A. 520, 46 P. 844.

2918. Restraint of liberty—Petition for writ.

SEC. 2. When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretense whatever, he or she may apply for a writ of habeas corpus as aforesaid, which application shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf; if the confinement or restraint is by virtue of any judicial writ

or process or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused: the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

Legislation Sec. 2918. Act 1861 p. 354 § 2. F. S. p. 353 § 2. G. L. § 1324. G. S. § 1610.

2919. Hearing set—Pleadings—Causes of discharge—Duty of court.

SEC. 3. Upon the return of the writ of habeas corpus a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to show either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby all material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the facts by hearing the testimony and arguments as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody; and shall dispose of the prisoner as the case may require. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

First—Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person.

Second—Where, though the original imprisonment was lawful, yet, by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge.

Third—Where the process is defective in some substantial form required by law.

Fourth—Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest issue.

Fifth—Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner, under such process, is not the person empowered by law to detain him.

Sixth—Where the process appears to have been obtained by false pretense or bribery.

Seventh—Where there is no general law, nor any judgment, order or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

No court or judge, on the return of a habeas corpus, shall in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Legislation. Sec. 2919. Act 1861 p. 354 § 3. R. S. p. 353 § 3. G. L. § 1325. G. S. § 1611.

CITATIONS.

Where a conviction is wholly void a prisoner may be released on habeas corpus.—*Ex Parte Farnham*, 3 C. 545.

The writ issued to discharge a prisoner committed by the criminal court of Arapahoe county.—*Ex Parte Stout*, 5 C. 510.

The first and seventh sub-divisions cited in holding that where a judgment for murder had been reversed the trial court could not enter judgment for manslaughter without a retrial of the cause.—*Garvey's case*, 7 C. 394, 3 P. 909.

If the trial court be not lawfully constituted a trial and conviction are absolutely void.—*Allison, In re*, 13 C. 525, 22 P. 820.

In issuing the writ the practice of the supreme court is governed by the rules of the court and not by the statute. Pending the hearing the court may admit the prisoner to bail or remand him.—*Moyer, In re*, 35 C. 156, 91 P. 739.

A person will not be discharged on habeas corpus where the judgment is merely excessive. One district court has no power to review or supervise by habeas corpus the judgment of another district court.—*Martin v. District Court*, 37 C. 115, 86 P. 84.

2920. Witnesses in habeas corpus case—Duty of sheriff—Duty of witness.

SEC. 4. Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpoena to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses, therein named, to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable; it shall be the duty of such sheriff to serve such subpoena, if it be possible, in time to enable such witness or witnesses to attend; it shall be the duty of the witness or witnesses thus served with said subpoena to attend and give evidence before the judge or court issuing the same, on pain of being deemed guilty of a contempt of court and proceeded against accordingly by said judge or court.

Legislation. Sec. 2920. Act 1861 p. 330 § 169. R. S. p. 253 § 243. G. L. § 848. G. S. § 989.

2921. Duty of judge to examine witnesses.

SEC. 5. On the hearing of any habeas corpus issued as aforesaid it shall be the duty of the judge or court who shall hear the same to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense named in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not.

Legislation. Sec. 2921. Act 1861 p. 330 § 170. R. S. p. 254 § 24. G. L. § 849. G. S. § 990.

2922. Bail—Recognizance—Binding witness.

SEC. 6. When any person shall be admitted to bail on habeas corpus, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard

to the circumstances of the prisoner and the nature of the offense, conditioned for his or her appearance at the next district court to be holden in and for the county where the offense was committed or where the same is to be tried. Where any court or judge shall admit to bail or remand any prisoner, brought before him or them on any writ of habeas corpus, it shall be the duty of the said court or judge to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave; which recognizance so taken, together with the recognizance entered into by the prisoner, when he is admitted to bail, shall be certified and returned to the proper court on the first day of the next succeeding term thereof. If any such witness shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or he be otherwise discharged by due course of law. If any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office and be proceeded against accordingly.

[See Constitution, art. 2, section 17 as to deposition of witness.]

Legislation. Sec. 2922. Act 1861 p. 354 § 4. R. S. p. 354 § 4. G. L. § 1326. G. S. § 1612.

2923. Remand—Order—Second writ—Offenses not bailable.

SEC. 7. When any prisoner, brought up on a habeas corpus, shall be remanded to prison, it shall be the duty of the court or judge remanding him to make out and deliver to the sheriff, or other person to whose custody he shall be remanded, an order, in writing, stating the cause or causes of remanding him. If such prisoner shall obtain a second writ of habeas corpus it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for any offense not bailable it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Legislation. Sec. 2923. Act 1861 p. 256 § 5. R. S. p. 355 § 5. G. L. § 1327. G. S. § 1613.

2924. Second writ—Duty of court—Bailable offense.

SEC. 8. It shall not be lawful for any court or judge, on a second writ of habeas corpus obtained by such prisoner, to discharge the said prisoner if he is clearly and specifically charged in the warrant of commitment with a criminal offense; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison where the offense is not bailable or where such prisoner shall fail to give the bail required.

Legislation. Sec. 2924. Act 1861 p. 356 § 6. R. S. p. 355 § 6. G. L. § 1328. G. S. § 1614.

2925. Once discharged, causes for reimprisonment.

SEC. 9. No person who has been discharged by order of a court or judge on a habeas corpus shall be again imprisoned, restrained or kept in custody for the same cause, unless he be afterwards indicted for the same offense, nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

First—If, after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof and committed by legal process for the same offense.

Second—If, in a civil suit, the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action.

Third—Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

Legislation. Sec. 2925. Act 1861 p. 356 § 7. R. S. p. 355 § 7. G. L. § 1329. G. S. § 1615.

2926. Trial to be within two terms after imprisonment.

SEC. 10. If any person shall be committed for any criminal

or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the expiration of the second term of the court having jurisdiction of the offense, the prisoner shall be set at liberty by the court, unless the delay shall have been on the application of the prisoner. If such court at the second term shall be satisfied that due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case until the third term; *Provided*, That in computing the terms, the term of court at which the indictment is presented, or the information filed, shall not be included.

[For statute of limitations against indictment see section 1949.]

Legislation. Sec. 2926. Act 1907 p. 350 § 1, amending G. S. § 1616. G. L. § 1330. R. S. p. 355 § 8. Act 1861 p. 357 § 8.

The amendment attempts to give an additional term during which a prisoner may be held without trial. This might amount in some counties to a period of three years and seems to be an open violation of section 16 of the Bill of Rights which guarantees the right to a "speedy public trial."

CITATIONS.

• Where the defendant was not tried for four successive terms the failure not being upon his application and he being in custody the entire time he was discharged.—*Garvey. In re.* 7 C. 503. 4 P. 758.

Where a defendant was under indictment and other indictments were returned but no capiases were issued upon the latter indictments it was presumed that his detention was upon the first indictment.—*Packer v. Peo.*, 26 C. 312, 57 P. 1089.

A defendant should be discharged where the delay occurs solely by reason of the over-crowded condition of the docket.—*Rude v. Peo.*, 44 C. 385, 99 P. 317.

The defendant who goes to trial without objection can not obtain his discharge on the ground that he was not tried on or before the second term.—*Heller v. Peo.*, 2 A. 471, 31 P. 777 (reversed upon other points. 22 C. 11, 43 P. 124).

The date of commitment by a justice of the peace is the time after which the two terms must be counted.—*Cummins v. Peo.* 4 A. 75, 34 P. 735.

The lapse of three full terms of court entitles the defendant to discharge notwithstanding he has been out on bail.—*Van Buren v. Peo.*, 7 A. 140, 42 P. 601.

2927. Prisoner not removed within fifteen days of trial term.

SEC. 11. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on habeas corpus under this act out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried; except it be to convey him or her into the county where the offense with which he or she stands charged is properly cognizable.

Legislation. Sec. 2927. Act 1861 p. 357 § 9. R. S. p. 356 § 9. G. L. § 1331. G. S. § 1617.

2928. Removal of prisoners—Causes.

SEC. 12. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper or other person, or his under-sheriff or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by habeas corpus, or some other legal writ; or where the prisoner shall be delivered to the constable or other inferior officer to be carried to some common jail; or shall be removed from one place to another within the county, in order to his discharge or trial in due course of law; or in case of sudden fire, infection or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapter concerning jails and jailers; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States or territories: if any person shall, after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved in the manner hereinafter mentioned.

Legislation. Sec. 2928. Act 1861 p. 357 § 10. R. S. p. 356 § 10. G. L. § 1332. G. S. § 1618.

2929. Judge refusing or delaying writ—Penalty.

SEC. 13. Any judge empowered by this chapter to issue writs of habeas corpus, who shall corruptly refuse to issue such writ when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall for every such offense forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

Legislation. Sec. 2929. Act 1861 p. 356 § 11. R. S. p. 256 § 11. G. L. § 1333. G. S. § 1619.

2930. Failure to obey writ—Penalty.

SEC. 14. If any officer, sheriff, jailer, keeper or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this chapter, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon the said court or judge may and shall issue an attachment against such officer, sheriff, jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprise, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person shall also forfeit to the prisoner or aggrieved party a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Legislation. Sec. 2930. Act 1861 p. 358 § 12. R. S. p. 357 § 12. G. L. § 1334. G. S. § 1620.

2931. Avoiding writ—Transferring or concealing prisoner—Penalty.

SEC. 15. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of habeas corpus is issued, who with the intent to avoid the effect of such writ shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or

change the place of his or her confinement, with intent to avoid the operation of such a writ, or with intent to remove him or her out of this state, shall forfeit for every such offense one thousand dollars, and be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of habeas corpus had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Legislation. Sec. 2931. Act 1861 p. 358 § 13. R. S. p. 357 § 13. G. L. § 1335. G. S. § 1621.

2932. Failure to deliver copy of process to prisoner—Penalty.

SEC. 16. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner committed on civil or criminal process of any court of magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Legislation. Sec. 2932. Act 1861 p. 357 § 14. R. S. p. 357 § 14. G. L. § 1336. G. S. § 1622.

2933. Detention after release on habeas corpus—Penalty.

SEC. 17. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a habeas corpus, shall, contrary to the provisions of this chapter, arrest or detain him again, for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

Legislation. Sec. 2933. Act 1861 p. 357 § 15. R. S. p. 357 § 15. G. L. § 1337. G. S. § 1623.

2934. Forfeitures go to use of prisoner.

SEC. 18. All the pecuniary forfeitures under this chapter shall inure to the use of the party for whose benefit the writ of

habeas corpus issued, and shall be sued for and recovered, with costs, in the name of the state, by every person aggrieved.

Legislation. Sec. 2934. Act 1861 p. 359 § 16. R. S. p. 357 § 16. G. L. § 1338. G. S. § 1624.

2935. In suit, general issue may be pleaded.

SEC. 19. In any action or suit for any offense against the provisions of this chapter, the defendant or defendants may plead the general issue and give the special matter in evidence.

Legislation. Sec. 2935. Act 1861 p. 359 § 17. R. S. p. 358 § 17. G. L. § 1329. G. S. § 1625.

2936. Recovery of forfeiture, not bar civil suit.

SEC. 20. The recovery of the said penalties shall be no bar to a civil suit for damages.

Legislation. Sec. 2936. Act 1861 p. 359 § 18. R. S. p. 358 § 18. G. L. § 1340. G. S. § 1626.

2937. Habeas corpus to testify or be surrendered—Run to any county—Copy of order—Fees of officer.

SEC. 21. The supreme and district courts within this state, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same, before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this state out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this state, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer for being liable for an escape. The party praying out such

writ of habeas corpus shall pay to the officer executing the same such reasonable sum for his services as shall be adjudged by the courts respectively.

Legislation. Sec. 2937. Act 1861 p. 359 § 19. R. S. p. 358 § 19. G. L. § 1341. G. S. § 1627.

2938. When county court can issue writ.

SEC. 22. Any county court or county judge in this state is hereby authorized to issue the writ of habeas corpus, in all cases except when the petitioner shall be detained or imprisoned on a charge of having committed a felony, or is detained and imprisoned under a judgment or order of the district court; *Provided*, That no county court or county judge shall issue such writ when the supreme court or district court, or any one of the judges of said courts, shall be in the county where such writ shall be issued, or when there shall be a term of the supreme or district court within such county within thirty days from the time of the application for said writ.

Legislation. Sec. 2938. G. S. § 1628. Act 1879 p. 84 § 1, entitled:

AN ACT

In Relation to Habeas Corpus.

CITATIONS.

In computing the time between the application to the county court and the sitting of the district court the day on which the application is made should be excluded.—*Evans v. Bowers*, 13 C. 613, 22 P. 813.

2939. Powers of county court or judge.

SEC. 23. When the writ of habeas corpus shall be issued by any county court or county judge, it shall be issued, and all subsequent proceedings on such writ shall be in the same manner as is now provided by law; and such county court or county judge shall have the same powers in such proceedings as are now given by law to the supreme court or district court, or any of the judges thereof.

Legislation. Sec. 2939. G. S. § 1629. Act 1879 § 2, cited under § 2938.

CHAPTER LXII.

HOLIDAYS.

Section.

2940. Holidays—Effect on negotiable instruments and return days—
When holiday falls on Sunday.
2941. When and where Saturday afternoon is a holiday.
2942. Arbor day—Tree planting.
2943. A holiday in public schools.
2944. Governor shall issue proclamation.
2945. Colorado day.
2946. Same—If day designated falls on Sunday.
2947. Labor day.
2948. Columbus day.
2949. Election day in November.
- 2949-A. Good roads day.
- 2949-B. Annual proclamation by governor.

2940. Holidays—Effect on negotiable instruments and return days—When holiday falls on Sunday.

SECTION 1. That the following days, viz: The first day of January, commonly called New Year's day; the twelfth day of February, known as the birthday of Abraham Lincoln; the twenty-second day of February, commonly called Washington's birthday; the thirtieth day of May, commonly called Decoration day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the governor of this state or the president of the United States, as a day of fasting and prayer or thanksgiving, shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, drafts, bank checks, promissory notes, or other negotiable instruments, also for the holding of courts, be treated and considered as is the first day of the week, commonly called Sunday; *Provided*, That in case of the said holidays, or any other

legal holiday heretofore or hereafter designated, shall fall upon a Sunday, then the Monday following shall be considered as the said holiday, and all notes, bills, drafts, checks or other negotiable instruments falling due or maturing on either of said days, shall be deemed to be payable on the next succeeding business day; and in case the return or adjourned day in any suit, matter or hearing before any court shall come on any day before mentioned, such suit, matter or proceeding, commenced or adjourned as aforesaid, shall not, by reason of coming on any such day, abate, but the same shall stand continued to the next succeeding day, at the same time and place, unless the next day shall be the first day of the week, when in such case the same shall stand continued to the day next succeeding, secular or business day, at the same time and place; *Provided, further*, Nothing in this act shall prevent the issuing or serving of process on any of the days above mentioned, or on Sunday.

[For service of process on holiday or Sunday see also Code, sections 127 and 451.]

[For what purposes court may be held on Sunday or holiday, Code, section 451, p. 154.]

Legislation. Sec. 2940. Act 1903 p. 245 § 1, entitled:

AN ACT

In Relation to Holidays.

2941. When and where Saturday afternoon is a holiday.

SEC. 2. That in every city of this state, having a population of one hundred thousand (100,000) or over, every Saturday, during the months of June, July and August, from and after the passage of this act, from twelve (12) o'clock at noon until twelve (12) o'clock at midnight is hereby designated a public holiday and the same shall be recognized, classed and treated as other holidays under the laws of this state; *Provided, however*, That in the case of a half holiday, bills of exchange, bank checks and promissory notes shall be presentable for acceptance or payment at or before twelve (12) o'clock noon of that day; and that for the purpose of protesting or otherwise holding liable any party to any bill of exchange, check or promissory note, and which shall not have been paid before twelve (12) o'clock at noon on any Saturday, during

said months, a demand of acceptance or payment thereof may be made, and notice of protest or dishonor thereof may be given on the next succeeding secular or business day; *And, provided, further*, That when any person shall receive for collection any check, bill of exchange or promissory note due and presentable for acceptance or payment on any Saturday, during said months such person shall not be deemed guilty of any neglect or omission of duty nor incur any liability in not presenting for payment or acceptance, or collecting such check, bill of exchange or promissory note on that day; *And, provided, further*, That in construing this section every Saturday, during said months, unless a whole holiday, shall, until twelve (12) o'clock noon, be deemed a secular or business day.

Legislation. Sec. 2941. Act 1893 p. 287 § 1, entitled:

AN ACT

To Designate Saturday During the Months of June, July and August as a Half Holiday and Providing for the Payment of Commercial Paper Due Thereon, in Every City of This State Having a Population of One Hundred Thousand (100,000) or Over.

See Sec. 4657.

2942. Arbor day—Tree planting.

SEC. 3. The third Friday in April of each year shall be set apart and known as "Arbor Day," to be observed by the people of this state in the planting of forest trees, for the benefit and adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of the day so established; *Provided*, That the actual planting of trees may be done on the day designated, or at such other most convenient time as may best conform to local climatic conditions, such other time to be designated, and due notice thereof given, by the several county superintendents of schools for their respective counties.

Legislation. Sec. 2942. Act 1889 p. 21 § 1, entitled:

AN ACT

To Establish Arbor Day.

2943. A holiday in public schools.

SEC. 4. The day, as above designated, shall be a holiday in all public schools of the state, and school officers and teachers are required to have the schools under their respective charge observe the day by planting of trees, or other appropriate exercises.

Legislation. Sec. 2943. Act 1889 § 2, cited under § 2942.

2944. Governor shall issue proclamation.

SEC. 5. Annually, at the proper season, the governor shall issue a proclamation, calling the attention of the people to the provisions of this act, and recommending and enjoining its due observance. The superintendent of public instruction, and the respective county superintendents of schools, shall also promote, by all proper means, the observance of the day; and the said county superintendent of schools shall make annual reports to the state forest commissioner of the action taken in this behalf in their respective counties.

Legislation. Sec. 2944. Act 1889 § 3, cited under § 2942.

2945. Colorado day.

SEC. 6. That the first day of August of the year 1907, and the first day of August of each and every year hereafter is hereby made a public holiday to be known as "Colorado Day," and such day is hereby set apart for a proper celebration by our people in commemoration of the admission of the state of Colorado into the union.

Legislation. Sec. 2945. Act 1907 p. 421 § 1, entitled:

AN ACT

Establishing Colorado Day.

2946. Same, if day designated falls on Sunday.

SEC. 7. That whenever the first day of August falls upon Sunday, the following Monday is hereby designated as the day for celebrating such event.

Provided. That this act shall not be construed to affect the

making or execution of agreements or instruments in writing, or to interfere with judicial proceedings.

Legislation. Sec. 2946. Act 1907 § 2, cited under § 2945.

2947. Labor day.

SEC. 8. The first Monday in September of the present year of our Lord, and each year thereafter, is hereby declared a public holiday, to be known as "Labor Day," and the same shall be recognized, classed and treated as other holidays under the laws of this state.

Legislation. Sec. 2947. Act 1887 p. 327 § 1, entitled:

AN ACT

Designating the First Monday in September of Each Year as a Public Holiday, to be Known as "Labor Day."

2948. Columbus day.

SEC. 9. The 12th day of October of the present year of our Lord, 1907, and the 12th day of October of each year thereafter is hereby declared a public holiday, to be known as "Columbus Day," and the same shall be recognized, classed and treated as other legal holidays under the laws of this state; *Provided*. That this act shall not be construed to affect commercial paper, the making or execution of agreements or instruments in writing, or interfere with judicial proceedings.

Legislation. Sec. 2948. Act 1907 p. 422 § 1, entitled:

AN ACT

Designating the 12th Day of October of Each Year as a Public Holiday to be Known as "Columbus Day."

2949. Election day in November.

SEC. 10. Election day in November of each year is hereby made a legal holiday.

Legislation. Sec. 2949. Act 1891 p. 166 § 43, cited under § 2145.

By Act of 1877 G. L. § 1342, G. S. § 1630, New Years Day, Washington's Birthday, Decoration Day, Fourth of July and Christmas were legal holidays. Also any day appointed for thanksgiving or fasting. This section was inadvertently repealed by the Negotiable Instruments Act 1897 p. 248 § 197 and its terms were not re-enacted until 1903. See notes to code § 451.

2949-A. Good roads day.

SEC. 10a. That the second Friday in May of each year shall be set apart and known as good roads day, to be observed by the people of this state in the discussion of public highways and in the construction and repair of the same, for the benefit and advancement of good roads in the state of Colorado, and in such further efforts and undertakings as shall be in harmony with the general character of the day so established.

In all public school of the state, school officers and teachers are required to have the schools in their respective charge observe the day by teaching and educating the children of the schools with respect to the benefit of good roads.

Legislation. Sec. 2949-A. Sec. 1 of Act of 1911, H. B. No. 89, entitled:

AN ACT

To Establish Good Roads Day. (Approved May 26, 1911.)

2949-B. Annual proclamation by governor.

SEC. 10b. Annually at the proper season, the governor shall issue a proclamation calling the attention of the people to the provisions of this act and recommending and enjoining its due observance. The state superintendent of public instruction and the respective county superintendents of schools shall also promote by all proper means the observance of the day, and the county superintendents of schools shall make annual report to the state highway commissioner of the action in this behalf in their respective counties.

Legislation. Sec. 2949-B. Sec. 2 of Act of 1911, cited under § 2949-A. § 3 was the Emergency Clause.

CHAPTER LXIII.

HOMESTEADS.

Section.

2950. Homestead exemption of \$2,000.
2951. Marginal entry—When wife or husband may cause same to be made.
2952. Exemption only when occupied.
2953. Widow and minor children entitled to exemption.
2954. Of what homestead may consist.
2955. Mortgaging homestead—When both husband and wife must join.
2956. Levy on homestead—Excess only applicable—Costs.
2957. Proceeds of sale exempt—Bona fide purchaser.

2950. Homestead exemption of \$2,000.

SECTION 1. Every householder in the state of Colorado, being the head of a family, shall be entitled to a homestead not exceeding in value the sum of two thousand dollars, exempt from execution and attachment, arising from any debt, contract or civil obligation, entered into or incurred after the first day of February, in the year of Lord one thousand eight hundred and sixty-eight.

Legislation. Sec. 2950. R. S. p. 385 § 57. G. L. § 1343. G. S. § 1631

CITATIONS.

A deed by husband and wife which contains no waiver of the homestead right is sufficient to pass title to lands occupied by them as a homestead.—*Drake v. Root*, 2 C. 689.

The homestead statute is not in derogation of the common law. It should be liberally construed. The sale of a homestead is no fraud upon creditors.—*Barnett v. Knight*, 7 C. 369, 3 P. 744.

The property may be homesteaded for the purpose of preventing a creditor from collecting his debts.—*McPhee v. O'Rourke*, 10 C. 305, 15 P. 420. *Tibbetts v. Terrill*, 44 C. 102, 96 P. 981, 104 P. 605.

Where the provisions of the statute have been complied with

CITATIONS CONTINUED.

the sale of a homestead on execution may be enjoined.—*Pierson v. Truax*, 15 C. 228, 25 P. 186.

This section cited in an action to recover homesteaded property sold under a trust deed.—*Wright v. Whittick*, 18 C. 55, 31 P. 490.

Lands entered under the United States homestead acts are liable to the satisfaction of debts contracted after the date of the receiver's receipt.—*Siruby-Estabrook M. Co. v. Davis*, 18 C. 93, 31 P. 495. *Weare v. Johnson*, 20 C. 366, 38 P. 375.

This section cited in holding that a trust deed upon land entered under the homestead act of congress need not be joined in by the wife of the grantor.—*Runyan v. Snyder*, 45 C. 160, 100 P. 422.

Mere purchase of a residence with intention to make it a home but without any actual occupancy does not constitute a homestead.—*Allen v. Shires*, 47 C. 433, 107 P. 1070. *Woodward v. Peo's Nat. Bank*, 2 A. 370, 31 P. 184.

The question of abandonment of a homestead is largely one of intention. An equitable title, a lease, or any title which may be the subject of levy or sale may also be the subject of a homestead claim.—*Dallemand v. Mannon*, 4 A. 266, 35 P. 681.

This section cited in an action where an execution sale had been made of a homestead.—*Copeland v. Bank*, 13 A. 492, 59 P. 71.

2951. Marginal entry—When wife or husband may cause same to be made.

SEC. 2. To entitle any person to the benefit of this act, he shall cause the word "homestead" to be entered in the margin of his record title to the same, which marginal entry shall be signed by the owner making such entry and attested by the clerk and recorder of the county in which the premises in question are situated, together with the date and time of day on which the said marginal entry is so made; *Provided*, That in case the husband is the owner of said homestead, the wife may cause such entry to be made and recorded, and the signature of the said entry by the wife shall have the same effect as if entered by the husband, the owner of the property.

And in case the wife is the owner of the homestead, and shall fail to make such homestead entry the husband may cause the homestead entry to be made, and the signature thereof by him shall

have the same effect as if the entry had been made by the wife, the owner of the property; *Provided*, That in case the title of the property shall fail to appear of record either such owner or husband or wife of such owner may become entitled to the full benefit of such homestead under this act to the same effect and subject to the same incidents as though such a marginal entry were made upon a proper record of the title thereto, by causing to be filed for record in the office of such clerk and recorder his or her duly subscribed and acknowledged statement describing the property and reciting that the subscriber is the owner or wife or husband of the owner thereof and claims the same as a homestead.

Legislation. Sec. 2951. Sec. 1 of Act of 1911, H. B. No. 19 approved Feb. 20. Substitute for § 2951, which was Act of 1903 p. 246 § 1 amending Act of 1881 p. 131 § 1, G. S., § 1632 which amended G. L. § 1344. R. S. p. 385 § 59.

Sec. 2 of the 1911 Act was the Emergency Clause.

The original Act merely required the word "Homestead" to be entered on the margin. The 1881 Act required it to be attested by the recorder. The last amendment was to allow either husband or wife to make the entry.

CITATIONS.

The fact that the wife did not join the husband in the execution of a trust deed made prior to the entry of the "homestead" did not invalidate the deed.—*Wells v. Caywood*, 3 C. 498.

The homestead is not exempt until the owner elects to make it so and he is in ample time if he records this election before a lien attaches.—*Barnett v. Knight*, 7 C. 369, 3 P. 748.

The sale of a homestead is no fraud upon the rights of creditors. The exemption law and statute of frauds must be construed together.—*Id.*

Where the provisions of the statute were complied with the property was not liable to attachment and a sale on execution could be enjoined.—*Pierson v. Truax*, 15 C. 288, 25 P. 185.

A homestead is protected from seizure under execution and perhaps from foreclosure under a trust deed as well as a mortgage where the wife has not joined in the execution of such deed; under the laws of 1881 the husband could sell without the wife joining in the conveyance.—*Wright v. Whittick*, 18 C. 56, 31 P. 490.

Real estate which has not been subjected specifically to a judgment lien by the levy of an execution before it was homesteaded is exempt from execution. Homestead and exemption laws are to be liberally construed.—*Weare v. Johnson*, 20 C. 366, 38 P. 375.

CITATIONS CONTINUED.

The word "homestead" written on the margin of a deed itself is not sufficient, it must be written on the margin of the recorded title.—*Leppel v. Kus*, 38 C. 295, 88 P. 449.

A mere judgment lien upon land does not prevent the occupant from designating it as a homestead and holding it exempt from execution upon the judgment after such designation.—*Woodward v. Peo., Nat. Bank*, 2 A. 370, 31 P. 184.

The word homestead may be entered on the margin of the record of a receiver's receipt.—*Dallemand v. Mannon*, 4 A. 266, 35 P. 681.

This section cited in holding void a levy and execution against a homestead.—*Copeland v. Bank*, 13 A. 492, 59 P. 71.

2952. Exemption only while occupied.

SEC. 3. Such homesteads shall only be exempt as provided in the first section of this act, while occupied as such by the owner thereof, or his or her family.

[Section 1 above referred to is section 2950.]

Legislation. Sec. 2952. R. S. p. 385 § 59. G. L. § 1345. G. S. § 1633.

CITATIONS.

This section does not require an actual personal occupation at all times and under all circumstances.—*Pierson v. Truax*, 15 C. 223, 25 P. 185.

A removal which is temporary only but with an intention to return does not work an abandonment neither does the lease of the premises for a definite period.—*Dallemand v. Mannon*, 4 A. 266, 35 P. 681.

2953. Widow and minor children entitled to exemption.

SEC. 4. When any person dies seized of a homestead, leaving a widow or husband, or minor children, such widow, or husband, or minor children, shall be entitled to the homestead; but in case there is neither widow, husband, nor minor children, the homestead shall be liable for the debts of the deceased.

Legislation. Sec. 2953. R. S. p. 385 § 60. G. L. § 1346. G. S. § 1634.

CITATIONS.

Under R. S. 1868 the wife had a right in that homestead only of which the husband was seized at the time of his death.—*Drake v. Root*, 2 C. 689.

CITATIONS CONTINUED.

This section cited in holding that a homesteading is in time if recorded before a lien attaches in favor of a creditor.—*Barnett v. Knight*, 7 C. 374, 3 P. 751.

The homestead character is not vitiated when the designation was for the purpose of preventing a creditor from collecting his debt.—*McPhee v. O'Rourke*, 10 C. 305, 15 P. 420.

2954. Of what homestead may consist.

SEC. 5. The homestead mentioned in this act may consist of a house and lot or lots, in any town or city, or of a farm consisting of any number of acres, so that the value does not exceed two thousand dollars.

Legislation. Sec. 2954. R. S. p. 386 § 61. G. L. § 1347. G. S. § 1633.

CITATIONS.

An equitable title, a lease for a term of years, or any title which may be the subject of levy and sale may also be the subject of a homestead claim.—*Dallemand v. Mannon*, 4 A. 262, 35 P. 681.

2955. Mortgaging homestead—When both wife and husband must join.

SEC. 6. That nothing in this act shall be construed to prevent the owner and occupier of any homestead from voluntarily mortgaging or otherwise conveying the same; *Provided*, No such mortgage or other conveyance shall be binding against the wife of any married man who may be occupying the premises with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking the acknowledgment shall fully apprise her of her rights and the effect of signing the said mortgage or other conveyance; *And provided, further*, That if the owner of said homestead be the wife of any married man who may be occupying the premises with her, no such mortgage or other conveyance shall be binding against said husband, unless he shall sign and acknowledge said mortgage or other conveyance.

Legislation. Sec. 2955. Act 1903 p 247 § 2, amending G. S. § 1636. G. L. § 1348. R. S. p. 386 § 62. The purpose of the amendment was to protect the husband the same as the wife was already protected.

CITATIONS.

Under R. S. 1868 the husband could convey the homestead without the wife joining in the deed.—*Drake v. Root*, 2 C. 689. *Wells v. Caywood*, 3 C. 498. *Wright v. Whittick*, 18 C. 56, 31 P. 490.

Whether the term mortgage includes trust deeds considered but not determined.—*Wright v. Whittick*, 18 C. 56, 31 P. 490.

Facts stated which created an equitable mortgage or lien on real estate which could not be defeated by defendant designating the same as a homestead.—*Patrick v. Morrow*, 33 C. 512, 81 P. 243.

This section cited in holding that a trust deed upon land entered under the homestead act of congress need not be joined in by the wife of the grantor.—*Runyan v. Snyder*, 45 C. 160, 100 P. 422.

2956. Levy on homestead—Excess only applicable—Costs.

SEC. 7. When any creditor shall be of the opinion that any homestead provided for in this act is of greater value than two thousand dollars, on filing an affidavit of that fact, with the clerk of the district court, such creditor may proceed against said homestead as in ordinary cases, and if the said homestead shall sell for more than two thousand dollars and costs, the excess shall be applied to the payment of the demand of such creditor; but in all cases the sum of two thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than two thousand dollars and costs, the person instituting the proceedings shall pay the costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

Legislation. Sec. 2956. R. S. p. 386 § 63. G. L. § 1349. G. S. § 1637.

CITATIONS.

This section cited in holding that the sale of a homestead is no fraud upon the rights of creditors.—*Barnett v. Knight*, 7 C. 374, 3 P. 751.

The fact that there is a valid homestead does not defeat the right of a creditor to subject the property to his claim where the property was worth more than the homestead.—*Tibbetts v. Terrell*, 44 C. 103, 96 P. 981, 104 P. 605.

A party who has acquired a homestead may sell integral

CITATIONS CONTINUED.

portions of it without impairing his rights in the residue.—*Daleman v. Mannon*, 4 A. 266, 268, 35 P. 681.

Where a homestead was sold under execution and the execution returned satisfied the sale being void the creditor was entitled to have satisfaction of the execution and judgment canceled so that another execution might issue.—*Copeland v. Bank*, 13 A. 492, 59 P. 71.

2957. Proceeds of sale exempt—Bona fide purchaser.

SEC. 8. That in case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a bona fide purchaser for a valuable consideration.

Legislation. Sec. 2957. R. S. p. 386 § 64. G. L. § 1350. G. S. § 1625.

CITATIONS.

A bona fide purchaser of a homestead takes the same entirely free from liens or other claims against his grantor.—*Barnett v. Knight*, 7 C. 375, 3 P. 752.

CHAPTER LXIV.**HORSESHOERS.****Section.**

2958. Horseshoers must be registered.
2959. Certificate of examination.
2960. Certificate to practice.
2961. Board of examiners—Examination of applicants—Service of apprentices—Report of board.
2962. Qualifications of members of board—Bond of members.
2963. County clerk keep registry book.
2964. Penalty for presenting false certificate for registration.
2965. Jurisdiction of justice of the peace.

2958. Horseshoers must be registered—Apprentices.

SECTION 1. No persons shall practice horseshoeing as a master or journeyman horseshoer in any city of this state having a population of 70,000 inhabitants or more, unless he is duly registered as hereinafter provided in a book kept for that purpose in the office of the county clerk of the county in which he practices.

Apprentices may follow the occupation of horseshoeing while learning the trade.

Legislation. Sec. 2958. Act 1897 p. 164 § 1, entitled:

AN ACT

To Regulate the Practice of Horseshoeing in the Cities of the State of Colorado, Having a Population of 70,000 Inhabitants or More.

2959. Certificate of examination.

SEC. 2. No person shall be entitled to register as master or journeyman horseshoer without presenting a certificate of satisfactory examination before the board of examiners as provided for in section 4.

[Section 4 referred to is section 2961.]

Legislation. Sec. 2959. Act 1897 § 2, cited under § 2958.

2960. Certificate to practice.

SEC. 3. Any person who has been practicing as a master or journeyman horseshoer in the state for a period of not less than four years preceding the passage of this act may register within three months after the passage of this act, upon making and filing with the county clerk of the county in which he practices an affidavit stating that he has been practicing horseshoeing for the period hereinbefore prescribed, and upon complying with this section shall be exempt from the provisions of this act requiring an examination. Any person who wishes to practice as a master or journeyman can apply to the board of examiners, and upon passing a satisfactory examination shall receive a certificate to practice as such.

Legislation. Sec. 2960. Act 1897 § 3, cited under § 2958.

2961. Board of examiners—Examination of applicants—Service of apprentices—Report of board.

SEC. 4. A board of examiners, consisting of one veterinarian and two master horseshoers and two journeymen horseshoers, is hereby created, all of whom shall be residents of the state of Colorado, whose duty it shall be to carry out the provisions of this act. The members of said board shall be appointed by the governor, and the term of office shall be for two years, or until their successors shall be duly appointed and qualified. The board of examiners shall hold sessions for the purpose of examining applicants desiring to practice horseshoeing as master or journeyman horseshoers as often as shall be necessary, and shall grant a certificate to any person showing himself qualified to practice, and shall receive as compensation a fee of two dollars from each person examined. Three members of said board including the veterinary surgeon and at least one master horseshoer, shall constitute a quorum. The board shall adopt a set of rules governing examination of applicants. The board of examiners shall regulate as to the time apprentices shall serve in learning the trade, which shall not be more than three years, at any time, and an apprentice may make application to the board of examiners, and if he passes a satisfactory examination they shall grant him a certificate to

practice as a master or journeyman. The board of examiners shall submit to the governor a biennial report as to receipts and expenditures, and the business transacted by them. They shall also submit to him the rules for examination for his approval.

Legislation. Sec. 2961. Act 1897 § 4, cited under § 2958.

2962. Qualifications of members of board—Bond of members.

SEC. 5. The veterinary surgeon appointed on said board shall be a practicing graduate, having a diploma from some reputable veterinary institute, who has been a resident of Colorado three years prior to his appointment. The master horseshoers appointed on said board shall have had ten years practice as horseshoers, and in business giving employment to horseshoers prior to and at the time of appointment, having had a bona fide residence of five years in the state of Colorado. The journeyman horseshoers shall have had ten years practical experience in horseshoeing, with a residence of five years in Colorado prior to appointment. Each member of the board shall give a bond of \$500.00 to the state for the faithful performance of his duties as member of the board.

Legislation. Sec. 2962. Act 1897 § 5, cited under § 2958.

2963. County clerk keep registry book.

SEC. 6. The county clerk of each county containing any such city shall provide a book to be known as the "Master and Journeyman Horseshoers' Register," in which shall be recorded the names of the registrants, who shall then be entitled to continue the practice of horseshoeing. Every applicant who shall have complied with the provisions of sections 2 and 3, shall be admitted to registration, and shall pay the clerk of said county the sum of twenty-five cents, which shall be received as full compensation for such registration.

[Section 2 referred to is section 2959.]
[Section 3 referred to is section 2960.]

Legislation. Sec. 2963. Act 1897 § 6, cited under § 2958.

2964. Penalty for presenting false certificate for registration.

SEC. 7. Any person who shall present to the clerk for the purpose of registration any certificate which has been fraudulently obtained, or shall practice as a master or journeyman horseshoer without conforming to the requirements of this act, or shall otherwise violate or neglect to comply with any of the provisions of this act, shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five dollars nor more than fifty dollars, or imprisonment in the county jail for a period of not less than one day and not exceeding thirty days for each and every violation hereof; each day being considered a separate offense.

Legislation. Sec. 2964. Act 1897 § 7, cited under § 2958.

2965. Jurisdiction of justice of the peace.

SEC. 8. Justices of the peace shall have jurisdiction in all cases arising under this act.

Legislation. Sec. 2965. Act 1897 § 8, cited under § 2958.

CHAPTER LXV.

HORTICULTURE.

- I. STATE BOARD OF HORTICULTURE.—2966-2979.
 - II. STATE ENTOMOLOGIST—COUNTY HORTICULTURAL INSPECTORS.—2980-3001.
-

I. STATE BOARD OF HORTICULTURE.

Section.

- 2966. State board of horticulture—Term of members.
 - 2967. Fruit districts.
 - 2968. Member from each district.
 - 2969. Officers of board—Salary and mileage of secretary and members.
 - 2970. Meetings of board—Lectures.
 - 2971. Regulations for prevention of disease.
 - 2972. State horticultural exhibitions.
 - 2973. County inspector—Duties—Penalty for failure to obey notices.
 - 2974. Annual report of board.
 - 2975. Annual convention.
 - 2976. Annual report filed and published.
 - 2977. Distribution of reports.
 - 2978. Annual appropriation.
 - 2979. Unlawful to spray with substance injurious to bees—Report of bee keepers' association filed.
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2966. State board of horticulture—Term of members.

SECTION 1. That a state board of horticulture is hereby created the members of which shall be appointed by the governor, one from each of the fruit districts of the state. Said board shall be non-political and all members shall be practical horticulturists; *Provided*, That the members of the present board of horticulture, whose terms have not expired, shall remain in office until

the expiration of their terms of office, and the governor shall thereafter, at each biennial period, appoint from the several districts in which vacancies occur members for the term of six years. Their term of office to begin within thirty days after appointment. Vacancies caused by death, resignation, or removals from office, shall be filled by the governor as in the case of original appointments. Members of the board shall at all times be bona fide residents of their respective districts.

Legislation. Sec. 2966. Sec. 1 of Act of 1911, H. B. No. 129. Substitute for § 2966 which was Act of 1897 p. 59 § 1. entitled:

AN ACT

To Create a State Board of Horticulture; Define Its Duties and Compensation; to Protect and Promote the Horticultural Interests of the State; Making An Appropriation Therefor; and to Repeal An Act to Establish a Bureau of Horticulture, Approved March 8, 1883; Also, An Act to Create State and County Boards of Horticulture, Etc., Approved April 5, 1893.

Sec. 13 made an appropriation. § 16 was a repealing section. The Acts repealed mentioned in the title are 1883 p. 210 (G. S. §§ 1639-1645) and 1893 p. 288. The 1883 Act had already been repealed by the 1893 Act cited, and §§ 5-9 Act 1893 were additionally repealed by Act 1897 p. 173 § 10.

CITATIONS.

Under the act of 1883 the Horticultural society became a state bureau and was not within the constitutional inhibition of sec. 34 art. V of the constitution.—*Peo. v. Spruance*, 8 C. 531, 535, 9 P. 628.

2967. Fruit districts.

SEC. 2. From and after March 1, 1913, the state of Colorado shall be divided into seven fruit districts, as follows:

District number one shall be composed of the counties of Montezuma, La Plata, Hinsdale, Archuleta, San Juan and Dolores.

District number two shall be composed of the counties of Fremont, Teller, El Paso, Pueblo, Custer, Huerfano, Chaffee, Lake, Saguache, Costilla, Rio Grande, Conejos and Mineral.

District number three shall be composed of the counties of Adams, Arapahoe, Denver, Yuma, Jefferson, Clear Creek, Gilpin, Park, Douglas, Elbert, Lincoln, Kit Carson and Cheyenne.

District number four shall be composed of the counties of Otero, Bent, Kiowa, Prowers, Baca and Las Animas.

District number five shall be composed of the counties of Mesa, Garfield, Rio Blanco, Routt, Moffat, Eagle, Summit and Pitkin.

District number six shall be composed of the counties of Delta, Montrose, Gunnison, Ouray and San Miguel.

District number seven shall be composed of the counties of Boulder, Larimer, Weld, Morgan, Logan, Sedgwick, Phillips, Jackson, Grand, Washington, and Yuma.

Legislation. Sec. 2967. Sec. 2 of Act of 1911, cited under § 2966.

2968. Member for each district—Duties.

SEC. 3. There shall be a member of the state board of horticulture appointed from each fruit district, and every member shall have a special supervision of the horticultural interests in his own district. He shall see that the regulations prescribed by the state board for the prevention of the spread of contagious diseases among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and for the disinfection of grafts, scions, orchard debris, empty fruit boxes, fruit trees, etc., are intelligently and efficiently carried out in his district.

Legislation. Sec. 2968. Act 1897 § 3, cited under § 2966.

2969. Officers of board—Salary and mileage of secretary and members.

SEC. 4. The state board of horticulture shall have an office at the state capitol, to be maintained at the expense of the state, and shall meet at said office on the fourth Tuesday in May of each year, and at such meeting shall elect a president and a secretary who may or may not be a member of said board. The secretary shall receive a salary of eighteen hundred dollars (\$1,800.00) per year and actual traveling expenses when in the discharge of his duties. And the members of the board, when in actual attendance on meetings of the board and discharge of official duties, shall receive four dollars (\$4.00) per

day for each day, and actual traveling expenses necessarily incurred in the discharge of said duties; *Provided*, That said members of the board shall not receive pay for more than thirty days in any one year. The stenographer of the board shall receive a salary of twelve hundred dollars (\$1,200.00) per year. It shall be the duty of the secretary to attend all meetings of the board and preserve records of those proceedings and correspondence; to collect books, pamphlets, periodicals and other documents containing information relating to horticulture and preserve the same; to collect statistics and other information showing the actual condition and progress of horticulture in the state and elsewhere; to correspond with agricultural and horticultural societies, colleges and schools of agriculture and horticulture, and other bodies and persons as he may be directed by the board; to prepare, as required by the board, reports for publication; to co-operate, as far as possible, with the state entomologist to prevent the introduction, importation and spread of injurious insects and plant diseases, and to aid in their extermination when found in the state. He shall, from time to time, under the direction of the board, visit different parts of the state for the purpose of organizing fruit interests, and shall at all times be under the direction of the board of horticulture.

Legislation Sec. 2969. Sec. 3 of Act of 1911, cited under § 2966.

2970. Meetings of board—Lectures.

SEC. 5. The board may receive, manage, use and hold donations and bequests for promoting the objects of its formation. It shall meet semi-annually and at any other time and place as it may seem expedient to consult and adopt such measures as will best promote the horticultural interests of the state. It may, without expense to the state, select and appoint competent and qualified persons to lecture in each of the horticultural districts of the state for the purpose of illustrating practical horticulture and horticultural topics, and imparting instruction in the method of culture, pruning, fertilizing, and also the best methods of eradicating diseases of fruits and fruit trees, cleansing orchards and exterminating fruit pests. The office of the board shall be kept open according to the directions of the board and the secretary shall personally have

charge of the office in the absence of the board, wherein he shall keep all records and perform the duties of his office.

Legislation. Sec. 2970. Sec. 4 of Act of 1911, cited under § 2966.

2971. Regulations for prevention of disease.

SEC. 6. For the purpose of preventing the spread of contagious diseases among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, orchard debris, empty fruit boxes and packages, and other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, said board shall make such regulations for the inspection and disinfection thereof, which regulation shall be circulated in printed form by the board among the fruit growers and fruit dealers of the state, and shall be published in at least three issues of a paper of general circulation in the horticultural counties of the state. Such regulations so published, shall be held to impart notice to all persons within this state, and shall be binding on all persons. It shall be the duty of the county fruit inspectors to enforce the regulations made or prescribed by the state board.

Legislation. Sec. 2971. Act 1897 § 6, cited under § 2966.

2972. State horticultural exhibitions.

SEC. 7. The state board shall have the power to authorize the holding of state horticultural exhibitions and shall determine the time and place for holding said exhibitions with power to arrange for premiums and awards and perform such other duties as may be necessary in conducting such exhibitions.

[See also sections 2507 to 2518 for State Fair at Pueblo.]

Legislation. Sec. 2972. Act 1897 § 7, cited under § 2966.

2973. County inspector—Duties—Penalty for failure to obey notices.

SEC. 8. It shall be the duty of the county horticultural inspector in each county, whenever he shall deem it necessary, to

make an inspection of any orchard, nursery or trees, or any fruit packing house, store room, sales room, or other place or article within his jurisdiction, and if found infested with insects, or pests or diseases injurious to fruit, fruit trees, vines, bushes or other horticultural interests, he shall notify the owner or owners, or person or persons in charge or in possession of such trees, place or thing as aforesaid, that the same or any of them are infected with insects, or their eggs or larvae or with fruit or fruit tree diseases, and shall give a formula for the treatment thereof, and such person or persons so notified shall eradicate or destroy the said insects or pests, or their eggs or larvae, within a certain time to be specified in said notice. Said notice may be served upon the person or persons owning or having charge of such infected trees or places, or articles aforesaid by any inspector, or by any one deputized by him, or it may be served the same as summons in a civil action. If the owner or owners, person or persons, in charge or possession of orchard, or nursery, trees or places, or articles infested with said insects, or any of them, their larvae or eggs, after having been notified as above by said inspector to destroy the same or made application of treatment as directed, shall fail, neglect or refuse so to do, he or they shall be guilty of maintaining a public nuisance, and shall be punished by a fine in a sum not less than five (5) nor more than one hundred (100) dollars: and any such orchard, nurseries, trees, or places, or articles thus infested, after such conviction shall be adjudged, and the same is hereby declared a public nuisance, and may be proceeded against as such. If the defendant be found guilty, the court in its judgment shall order the said inspector to abate the same, and the expenses thus accrued shall be taxed up as costs against the defendant and adjudged a lien upon said property. The district and county courts shall have jurisdiction in such cases.

[For service of summons in civil action see Code, section 40.]
[See section 3001 and note.]

Legislation. Sec. 2973. Act 1897 § 8, cited under § 2966.

2974. Annual report of board.

Sec. 9. The said board shall make an annual report in the

month of February of each year to the governor, embracing the proceedings of the board for the past twelve months, and statistics from the state, district and county horticultural societies, and county horticultural inspectors, showing the general condition of horticulture throughout the state, together with such essays and statements of facts and recommendations as may be deemed useful to the horticultural interests of the state, with an itemized statement of moneys expended.

Legislation. Sec. 2974. Sec. 5 of Act of 1911, cited under § 2966.

2975. Annual convention.

SEC. 10. One of the semi-annual meetings provided for in section 3 shall be held during the month of November of each year, to be known as the annual horticultural convention of the state. Said convention shall not be less than three days in duration, and shall be held at the rooms of the board of horticulture at the state capitol in Denver; said board shall cause proper notices of said convention to be published and shall have charge of the same.

[Section 3 referred to is section 2968.]

Legislation. Sec. 2975. Act 1897 § 10, cited under § 2966.

2976. Annual report filed and published.

SEC. 11. The annual report of the state board of horticulture, together with the salient features of the proceedings of the state horticultural society and the state bee keepers' annual convention, shall be edited by the state board of horticulture and duly filed with the secretary of state, who shall cause the same to be published in book form before the first day of May, annually, by the state.

Legislation. Sec. 2976. Sec. 6 of Act of 1911, cited under § 2966.

Sec. 7 of the Act was an appropriation, Sec. 8 a repealing Section and § 9 the Emergency Clause.

2977. Distribution of reports.

SEC. 12. The number of copies of said report shall be two thousand, all of which shall be bound in uniform style, annually, in one volume, and shall be distributed by the secretary of state as

follows: Ten copies each to the governor of the state, secretary of state, state auditor, and state treasurer; five copies each to the supreme judges and attorney general; two to each member of the legislature; one copy to each judge and clerk of district and county court; one copy to each newspaper office in the state; ten copies to the state university, school of mines, reform school and warden of the state penitentiary; two copies to each college of learning in the state; fifty copies to the state agricultural college, and two copies to the state historical society, and the remainder to the state horticultural board, to be distributed as said board may direct.

Legislation. Sec. 2977. Act 1897 § 12, cited under § 2966.

2978. Annual appropriation.

SEC. 13. After the said board of horticulture shall be duly qualified and accept the provisions of this act, they shall certify their acceptance of the same to the secretary of state and state auditor. After said acceptance, the state auditor shall annually on the first of June, on the order of said board, signed by the president and secretary of said board, draw a warrant on the state treasurer for the aforesaid sum of twenty-five hundred (2,500) dollars: *Provided*, Should the state horticultural board fail to carry out the provisions of this act during any one year, after the passage of this act, then and in that event the aforesaid warrant shall not be drawn for that year.

Legislation. Sec. 2878. Act 1897 § 14, cited under § 2966.

CITATIONS.

The appropriation by the act of 1883 was not self operative but was required to be made at each successive legislative assembly.—*Peo. v. Spruance*, 8 C. 532, 9 P. 628.

2979. Unlawful to spray with substance injurious to bees— Report of bee keepers' association filed.

SEC. 14. It shall be unlawful for any person or persons to spray fruit trees while in bloom, with any substance injurious to

bees. Any person violating the provisions of this section shall on conviction before any justice of the peace be liable to a fine of not less than \$5 or more than \$50. The proceedings of the state beekeepers' annual convention shall be filed with the secretary of the board of horticulture, who shall edit it and file with the secretary of state, who shall cause the same to be published annually with the report of the board of horticulture.

[See also section 2999.]

Legislation. Sec. 2979. Act 1897 § 15, cited under § 2966.

II. STATE ENTOMOLOGIST—COUNTY HORTICULTURAL INSPECTORS.

Section.

- 2980. State entomologist—Salary—Deputies—Salary.
- 2981. Qualifications of employees.
- 2982. County horticultural inspectors—Examination of applicants—Term.
- 2983. Inspection of nurseries, orchards and shade trees—Certificate—Infected stock.
- 2984. Fumigation of stock—Certificate of fumigation—Notice of imported stock.
- 2985. Inspection and fumigation of suspected stock—Penalty for failure to disinfect.
- 2986. Inspectors have right of entry to inspect and disinfect stock.
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- 2992. County horticultural inspector—Examination of applicants—Term of inspector—Bond of deputies—Compensation—Duties.
- 2993. Inspector notified of stock imported—Inspection.
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- 2995. Quarantine.
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- 2997. Imported stock must be labeled.
- 2998. Inspection of orchards and packing houses—Owner notified of disease—Penalty for failure to eradicate.
- 2999. Unlawful to spray with substance injurious to bees.
- 3000. Penalty for violation of act.
- 3001. Repeal.
- 3001-A. Petition to form pest inspection district.
- 3001-B. Such district when deemed formed.

II. STATE ENTOMOLOGIST—COUNTY HORTICULTURAL INSPECTORS.

Continued.

Section.

- 3001-C. Salary of state entomologist—Deputies.
- 3001-D. County and district inspectors—Term of office.
- 3001-E. Duty to inspect.
- 3001-F. Work of extermination of pests.
- 3001-G. Penalty for violation.
- 3001-H. Right of entry—Monthly reports.
- 3001-J. Notices how served—Highways.
- 3001-K. Distribution of literature.
- 3001-L. Salary and expenses, how paid.
- 3001-M. Appropriation.

2980. State entomologist—Salary—Deputies—Salary.

SEC. 15. For the purposes of this act, the entomologist of the Colorado state agricultural college is hereby declared to be state entomologist, whose duty shall be, directly or through his deputies or horticultural inspectors, to carry out the provisions of this act. The compensation of the state entomologist shall be five hundred (500) dollars per annum; his deputies and horticultural inspectors shall receive four (4) dollars a day, and assistant horticultural inspectors three dollars and fifty cents (\$3.50) a day in addition to their actual and reasonable expenses for time actually spent in carrying out the provisions of this act.

Legislation. Sec. 2980. Act 1907 p. 423 § 1, entitled:

AN ACT

To Prevent the Introduction, Importation or Spread of Injurious Insects and Plant Diseases in Colorado; to Provide for Their Extermination when Found in the State; to Require the Inspection of Nurseries, Nursery Stock and Orchards; to Create the Office of State Entomologist; to Make An Appropriation for Carrying Out This Act; to Regulate the Sale of Insecticides, and to Repeal Chapter Fifty-five (55) of the Session Laws of 1897.

2981. Qualifications of employees.

SEC. 16. The persons employed under this act, aside from the state entomologist, shall be the members of the state board of

horticulture and the county horticultural inspectors, and deputies of the state entomologist, whose duty it shall be to carry out the provisions of this act; assistant horticultural inspectors working under the general direction of horticultural inspectors, when necessary, and engaged by the horticultural inspectors, with the consent of the county commissioners; and helpers, who shall be common laborers employed to aid in carrying out the provisions of this act.

Legislation. Sec. 2981. Act 1907 § 2, cited under § 2980.

2982. County horticultural inspectors—Examination of applicants—Term.

SEC. 17. The county commissioners of any county, when petitioned by not less than twenty-five fruit growers of their county to appoint a horticultural inspector, shall make such appointment as soon as possible.

It shall be the duty of the state entomologist to examine all persons appointed by the county commissioners as horticultural inspectors, and if found competent and fully qualified to perform the duties of the office he shall issue to such applicant a license as a county horticultural inspector, no person shall act as inspector unless he holds such license, which license shall certify to the competency of such applicant, and shall authorize him to act as county horticultural inspector for a period of two years from date. *Provided*, That no person engaged in the nursery business either as owner, as agent, employe or as salesman for any nursery or agent to sell trees, shall be eligible for the position of horticultural inspector.

Legislation. Sec. 2982. Sec. 1 of Act of 1909 p. 115. Substitute for Sec. 2982 which was § 3 of Act of 1907 p. 424, cited under § 2980.

2983. Inspection of nurseries, orchards and shade trees—Certificate—Infected stock.

SEC. 18. It shall be the duty of the state entomologist directly, or through his deputies or inspectors, to inspect all the nurseries and orchards, and so far as possible shade trees of the state each year, for the purpose of determining whether or not any of them are infested with injurious insects or fungus or other

plant diseases that are likely to be disseminated to the injury of others. When a nursery and its premises appear to be free from such pests and diseases, the entomologist shall issue to the nurseryman a certificate stating these facts and duplicate certificates shall be filed with the secretary of the state board of horticulture, and the secretaries of such local societies as may request them. If any nursery stock or premises, or any portion of them, are found not to be free from injurious insects and plant diseases that are likely to be disseminated to the injury of others, the owner or renter in charge of such premises must disinfect the same to the satisfaction of the state entomologist, members of the state board of horticulture, or horticultural inspector having jurisdiction.

Legislation. Sec. 2983. Act 1907 § 4, cited under § 2980.

2984. Fumigation of stock—Certificate of fumigation—Notice of imported stock.

SEC. 19. Every owner or renter of a nursery in Colorado shall erect and maintain upon the premises, or in connection therewith, a suitable structure for the fumigation of nursery stock, buds and scions with hydrocyanic acid gas, and all stock, before leaving the nursery must be fumigated with this gas or otherwise treated in accordance with written or printed instructions furnished by the state entomologist. Every package, box, or bundle of nursery stock, buds, scions, or cuttings that are sold or otherwise disposed of in Colorado by a nursery or a dealer in nursery stock, either within or outside the state, must bear a certificate signed by the owner or renter of the same certifying that the nursery stock, scions, cuttings, or buds have been fumigated or otherwise disinfected in accordance with the laws of the state of Colorado. If nursery stock, scions, buds or cuttings are brought into the state by private parties or a common carrier without a satisfactory certificate of disinfection they must be fumigated with hydrocyanic acid gas or otherwise thoroughly disinfected by the inspector of the county where received before being delivered to the purchaser, however, when in this act it is directed that nursery stock, cuttings, scions, vines or any premises as enumerated in this act shall be disinfected, the owner of the infested property may, if he so requests, do the

work of disinfection himself, under the direction and supervision of the state entomologist or a horticultural inspector in charge, and to their satisfaction, and no fee or charge shall be made for such direction and supervision. The state entomologist shall furnish all deputies, horticultural inspectors and the state board of horticulture with a list of those nurseries outside and inside the state, whose stock may be turned over to the purchaser or addressee without further disinfection. *Provided*, That every owner of a nursery who sells trees and furnishes a certificate of inspection therefor, signed by the state entomologist shall be required to sign said certificate in ink. Such certificate, however, shall not deter the state entomologist or a horticultural inspector from examining or seizing any nursery stock, cuttings or scions and disinfecting the same, if found to be infested by living injurious insects or contagious diseases in any state of development. No person or persons, either as owner, agent, servant, employe, or common carrier shall bring or cause to be brought into any county of the state of Colorado having a county horticultural inspector, from any district, county, state or foreign country, any trees, vines, shrubs, scions, cuttings or grafts without notice of their arrival at their destination, at once, to the horticultural inspector of the county; and such articles shall not be delivered to the consignee, planted, sold, or in any way distributed until permission to do so has been given by the horticultural inspector of the county who may detain such stock only as long as it is necessary for proper inspection or disinfection, and shall begin such inspection or disinfection within twenty-four (24) hours after notice of arrival is given.

Legislation. Sec. 2984. Sec. 2 of Act of 1909 p. 116. Substitute for § 2984 which was § 5 of Act of 1907, cited under § 2980.

2985. Inspection and fumigation of suspected stock—Penalty for failure to disinfect.

SEC. 20. Whenever the state entomologist, his deputy or a horticultural inspector has reason to believe, or has been credibly informed that, at any place within the state, there exists, or have been introduced or offered for sale, plants, trees, shrubs, cuttings, scions, buds, fruit or other objects infested by injurious insects or plant diseases that are liable to be spread to the injury of others, it

shall be his duty to make an investigation of the suspected stock and premises and if they are found so infested, the state entomologist, his deputy or the horticultural inspector of the county shall notify the owner or possessor in writing of the nature of the infestation, specifying the insects or diseases that have been found, and demanding that, within a reasonable specified time, not to exceed ten (10) days, the infested goods and premises shall be disinfected. The owner of the infested property may choose whether he will have the infested property disinfected or burned, provided the case is not of such a nature that the state entomologist deems it necessary that the infested property be destroyed by fire, and in such cases the state entomologist shall, directly or through his deputy or a horticultural inspector, seize the infested property and burn it. If disinfection be decided upon and the possessor of the infested property refuses to disinfect the same in accordance with the instructions of the officer in charge, the state entomologist, or horticultural inspector shall take possession of the infested property and disinfect it as provided in this act. That each and every violation of any of the provisions of this act, and each and every non-compliance with the provisions thereof, or any of them, or non-compliance with any notice or direction given by the horticultural inspector in charge under the provisions of this act, shall be punishable by a fine in the sum of not less than five or more than one hundred dollars, and each and every day that any person, firm or corporation shall fail to comply with any notice in writing received from the horticultural inspector in charge under the provisions of this act shall be deemed a separate offense.

Legislation. Sec. 2985. Sec. 3 of Act of 1909 p. 117. Substitute for § 2985 which was § 6 of Act of 1907, cited under § 2980.

2986. Inspectors have right of entry to inspect and disinfect stock.

SEC. 21. The state entomologist, his deputy, or a horticultural inspector having jurisdiction, together with such help as they may need, in the prosecution of their work, are authorized, during reasonable business hours, to enter upon or into any premises, land, buildings or places of business where they may suspect

that infested or diseased plants, trees, shrubs, cuttings, scions, buds or other objects exist, for the purpose of inspecting, treating, cleaning or disinfecting the same, or otherwise carrying out the provisions of this act.

Legislation. Sec. 2986. Act 1907 § 7, cited under § 2980.

2987. Report of horticultural inspectors and state entomologist.

SEC. 22. Horticultural inspectors shall make a full report to the state entomologist, at least once each month of the work done during this period. The state entomologist shall file, for publication, an annual report with the secretary of the state board of horticulture which shall contain a summary of the work done during the year, and an itemized account of moneys received and expended in carrying out the provisions of this act together with such additional information in regard to the work as may seem to him important.

Legislation. Sec. 2987. Act 1907 § 8, cited under § 2980.

2988. Distribution of circulars and bulletins.

SEC. 23. Horticultural inspectors shall distribute to orchardists or other fruit growers such circulars and bulletins as shall be furnished them by the state entomologist or state board of horticulture giving information as to the methods of destroying or keeping in check injurious insects or plant diseases, and they shall also collect information concerning the conditions of orchards, nurseries, vineyards and berry fields as the state entomologist may direct, said information to be used by him in the preparation of his annual report.

Legislation. Sec. 2988. Act 1907 § 9, cited under § 2980.

2989. Sale of insecticide poisons.

SEC. 24. It shall be deemed a violation of this act for any one to sell in Colorado insecticide poisons such as paris green, london purple, white arsenic, arsenate of lead, arsenate of soda, arsenite of lead, arsenite of soda, acetate of lead, cyanide of potas-

sium, hellebore, pyrethrum powder, and the like, that are diluted or mixed with other substances, unless the kind and amount of the adulterants or mixtures are conspicuously printed in plain English upon each and every package sold. Upon each and every package of white arsenic, arsenate of soda, arsenite of soda, acetate of lead and cyanide of potassium, sold in this state the percentage of guaranteed purity must be plainly marked, and on all packages of arsenate or arsenite of lead the amount of water must be guaranteed.

Legislation. Sec. 2989. Act 1907 § 10, cited under § 2980.

2990. Salaries and expenses, how paid.

SEC. 25. The salary and expenses of the state entomologist and the per diem and expenses of his deputies in carrying out the provisions of this act shall be paid by the state treasury, but the wages of the horticultural inspectors and their assistants shall be paid out of the treasuries of the counties where their work is performed in each case.

Legislation. Sec. 2990. Act 1907 § 11, cited under § 2980.

2991. Appropriation—When act takes effect.

SEC. 26. The sum of four thousand (4,000) dollars per annum is hereby appropriated to pay the salaries of the state entomologist and the per diem of his deputies, and to pay their necessary expenses in traveling, printing blanks and circulars, and in otherwise carrying out the provisions of this act. The state auditor is hereby authorized to draw his warrants upon the state treasurer for the sum herein appropriated, upon the presentation of proper vouchers, and the treasurer shall pay the same out of any funds in the state treasury not otherwise appropriated. The provisions of this act shall not go into effect until the year 1909.

[The provisions embraced in sections 2980 to 2991 repeal chapter 55, L. '97, p. 168-173, sections 2992 to 3000 of this compilation, but do not go into effect until January 1, 1909.]

Legislation. Sec. 2991. Act 1907 § 12, cited under § 2980.

The chapter repealed by § 13 was the Act of 1897 p. 168. But because the repeal under the terms of § 12 of the Act did not go into effect until 1909 the Act was printed in the R. S. as its §§ 2992-3000.

2992-3000. (Repealed.)

Legislation. Secs. 2992-3000. Act 1897 p. 168 §§ 1-8.

Not printed because no longer in force as explained by the notes to § 2991. The repeal of the original Act carried with it the amendment to its § 7 by Act 1899 p. 230.

3001. Repeal.

SEC. 36. That section eight (8) of an act entitled "An act concerning horticulture," etc., approved April 15, 1897, is hereby repealed.

[An Act entitled and approved as repealed by sec. 2001 cannot be found, therefore both sections 2973 and 2999 are printed.]

Legislation. Sec. 3001. Act 1899 p. 220 § 1. Both the sections mentioned in the official note are now dead as explained in note to §§ 2992-3000. But it was undoubtedly § 8 of the Act of 1897 p. 173 (§ 2999) which was intended, the only discrepancy being that the text calls for an Act approved April 15 and the Act was in fact approved April 16, 1897.

3001-A. Petition to form pest inspection district.

SEC. 36a. Whenever the owners of a majority of the acreage of land in any contiguous area not exceeding thirty-six (36) square miles, shall desire to form a pest inspection district as hereinafter defined, they may file a petition for that purpose with the county commissioners of the proper county, and the said petition shall be directed to the board of county commissioners of such county, and shall contain a general description of the boundaries of the proposed district; a description of the lands of the persons signing such petition, according to government subdivisions, or by other description that will sufficiently locate the lands to be affected thereby; that the petitioners are the owners of a majority of the lands embraced in said district; that the said lands proposed to be formed into an inspection district have been invaded, or are in danger of being invaded, by grasshoppers, insects, rodents, weeds or plant diseases injurious to agricultural crops, trees, fruits or pasturage, naming and describing the specific pest or diseases against which said petitioners desire to be protected and showing the urgency for the formation of such district. The petition shall also name a person resident in said proposed district who shall be the deputy inspector for said district, as hereinafter provided.

Such petition shall be signed by each land owner joining in

the petition, by his own proper signature; the date of the petition shall be the date of its filing in the office of the board of county commissioners; and petitioner may revoke and cancel his signature to such petition at any time before filing the same, but not after such filing has been made.

Such petition shall, before filing, be verified under oath by at least one of the persons signing such petition; setting forth that the said petition was signed within sixty (60) days last preceding the making of said verification, and that all matters and things stated in said petition are true to the best of the knowledge and belief of affiant.

Legislation. Sec. 3001-A. Sec. 1 of Act of 1911, H. B. No. 50. entitled:

AN ACT

To Provide for the Protection of Trees, Fruits, Crops and Pasturage Against the Ravages of Insects, Rodents, Weeds and Plant Diseases; To Provide for the Formation of Pest Inspection Districts, to be Under the General Authority of the State Entomologist; and to Make an Appropriation for Carrying Out the Provisions of this Act. (Approved June 1, 1911.)

3001-B. Such district when deemed formed.

SEC. 36b. A pest inspection district shall be deemed to have been formed under the provisions of this act within five (5) days after the filing of the petition with the board of county commissioners, to continue for five years unless said board of county commissioners, within said five (5) days, shall by order entered of record, declare that said petition does not comply with the provisions of the statute, specifying the particular requirement which has not been complied with, and that no district has been legally formed.

Legislation. Sec. 3001-B. Sec. 2 of Act of 1911, cited under § 3001-A.

3001-C. Salary of state entomologist—Deputies.

SEC. 36c. The salary of the state entomologist shall be increased in the sum of five hundred dollars (\$500) annually for his services in administering this act, and he shall directly, and through his deputies and county inspectors, carry out its provisions,

and he may appoint such deputies as shall be found necessary for said purpose; such deputies shall receive not less than five dollars (\$5.00) per day, in addition to their actual and reasonable expenses and for the actual time spent in carrying out the provisions of this act.

Legislation. Sec. 3001-C. Sec. 3 of Act of 1911, cited under § 3001-A.

3001-D. County and district inspectors—Term of office.

Sec 36d. The county commissioners of any county, upon petition of not less than twenty-five (25) fruit growers, farmers, stock-growers or gardeners of their county, shall appoint a county inspector, who with the said district inspector provided for herein, shall be charged with the duty of carrying out and enforcing the provisions of this act. The district inspectors shall be subject to the orders of the county inspector, and the county inspector shall be subject to the orders of the state entomologist, and subject also to removal by the state entomologist. The county inspector shall have power to remove any district inspector for neglect of duty or failure to perform the duties of the office, and shall appoint his successor and fill any vacancy otherwise occurring, from among the residents of such district. The county inspector shall receive not less than five dollars (\$5.00) per day, in the discretion of the county commissioners, and the district inspectors shall receive not less than two and 50-100 (\$2.50) and not more than three dollars and fifty cents (\$3.50) per day, in addition to their actual expenses for the time actually employed in carrying out the provisions of this act.

The county and district inspectors shall hold such offices for a period of two (2) years from the date of appointment, unless sooner removed; *Provided*, That in any county where a horticultural inspector may be appointed, the office of horticultural inspector and county inspector shall be consolidated, and held by the same person. But such person shall draw only one per diem for his services, at the rates set herein.

Legislation. Sec. 3001-D. Sec. 4 of Act of 1911, cited under § 3001-A.

3001-E. Duty to inspect.

SEC. 36d. It shall be the duty of the state entomologist directly or through his deputies or county inspector to inspect all lands whereon he has cause to believe pests exist that are liable to spread to the serious damage of the community, whether such lands be located without or within pest inspection districts,—together with the borders of said districts at least twice each year, at proper seasons, and when called upon by the district inspector for the purpose of determining whether or not any of them are infested with such pests as are named in this act or in the district petition or any such as may be determined by the state entomologist to be injurious to the community.

Legislation. Sec. 3001-E. Sec. 5 of Act of 1911, cited under § 3001-A.

3001-F. Work of extermination of pests.

SEC. 36f. Whenever the state entomologist, his deputy, or county or district inspector, has reason to believe, or has been credibly informed, that within the state there exists lands infested by pests which are liable to spread to the injury of others, it shall be his duty to make an investigation of the suspected premises, and if they are found so infested, shall notify the owner or persons in charge or control of such premises; in writing, of the nature, extent and location of the infestation and demand that within a specified time certain specified work shall be done on the infested premises for the extermination of the pests, and if the occupier of the infested property refuses or fails to do effective work on the premises in accordance with the instructions of the officer in charge, such officer shall take possession of the infested premises, and do the work necessary for the extermination of said pest, as provided in this act. *Provided, however.* That either the state entomologist or the county inspector may, where cause exists outside of any pest inspection district, as above provided, pursue the same remedies above provided in all respects as to such lands and owners of lands outside of any such district the same as though embraced within a pest inspection district.

Legislation. Sec. 3001-F. Sec. 6 of Act of 1911, cited under § 3001-A.

3001-G. Penalty for violation.

SEC. 36g. Each and every violation of any of the provisions of this act, or non-compliance with any notice of direction given by the inspector in charge under the provisions of this act, shall render the offender liable in an action of debt for not less than twenty-five dollars (\$25.00) and not more than three hundred dollars (\$300.00), and each and every day that any person, firm or corporation shall fail to comply with any notice in writing received from the inspector in charge under the provisions of this act, shall be deemed a separate offense. If the land in question be within a pest inspection district and the defendant be found guilty the court shall also give judgment against the defendant for the cost and expense of doing the required work, and said judgment shall be adjudged a lien upon said property. The district and county courts shall have jurisdiction of such cases.

Legislation. Sec. 3001-G. Sec. 7 of Act of 1911, cited under § 3001-A.

3001-H. Right of entry—Monthly reports.

SEC. 36h. The state entomologist, or his deputy, or the county or district inspector, having jurisdiction, together with such help as they may need in the prosecution of their work, are authorized during reasonable business hours, to enter upon, or into any premises, lands or places within or without any pest district in this state where they may suspect that such pests as are named in this act or in the district petition or such as may be determined by the state entomologist to be injurious to the community,—for the purpose of inspecting, controlling and exterminating the same or otherwise carrying out the provisions of this act. The county inspector shall make a full report to the state entomologist at least once a month, of the work done during that period.

Legislation. Sec. 3001-H. Sec. 8 of Act of 1911, cited under § 3001-A.

3001-J. Notices how served—Highways.

SEC. 36j. Notice of work required to be done may be served upon the owner, occupier or person in charge of any land, or in case the land is unoccupied, then upon any resident agent of the owner thereof. All public highways and all rights of railroads,

ditches and reservoirs, and the owners thereof, shall be subject to the provisions of this act. Notice or summons in any suit or proceeding may be served upon any person or corporation, in form and manner as provided by the code of civil procedure.

Legislation. Sec. 3001-J. Sec. 9 of Act of 1911, cited under § 3001-A.

3001-K. Distribution of literature.

SEC. 36k. County inspectors or their deputies, shall distribute to possessors of premises in pest inspection district such information as to the methods of destroying or keeping in check grasshoppers, and other pests, and shall also collect information concerning the condition of lands and premises in pest districts, as the state entomologist may direct; said information to be used by him in preparation of his annual report.

Legislation. Sec. 3001-K. Sec. 10 of Act of 1911, cited under § 3001-A.

3001-L. Salary and expenses, how paid.

SEC. 36l. The salary and expenses of the state entomologist and the per diem and expenses of his deputies in carrying out the provisions of this act shall be paid by the state treasurer, but the wages of the county and district inspectors and their deputies shall be paid out of the treasury of the counties where their work is performed.

Legislation. Sec. 3001-L. Sec. 11 of Act of 1911, cited under § 3001-A.

3001-M. Appropriation.

SEC. 36m. The sum of two thousand dollars (\$2,000.00) per annum, is hereby appropriated to pay the salaries of the state entomologist and the per diem of his deputies and to pay their necessary expenses in traveling, printing blanks and circulars, in experimentation in ways of controlling pests, and in otherwise carrying out the provisions of this act; the state auditor is hereby authorized to draw his warrants upon the state treasurer for the sum herein appropriated, upon the presentation of proper vouchers, and the treasurer shall pay out of any funds in the state treasury not otherwise appropriated.

The funds herein appropriated and the appropriation made for carrying into effect the horticultural inspection law, as found in chapter 191, laws of 1907, are hereby consolidated and made a common fund for carrying into effect the aforesaid act, and this act, and to apply to the necessary expense of either or both acts as therein provided.

Legislation. Sec. 3001-M. Sec. 12 of Act of 1911, cited under § 3001-A. Chapter 191 mentioned in the section is now §§ 2980-2991.

Sec. 13 of the Act was the Emergency Clause.

CHAPTER LXVI.

HOTELS.

Section.

3002. Obtaining food or lodging with intent to defraud a misdemeanor.
3003. Proof of intent.
3004. Notice to be posted.
3005. Justices have jurisdiction—Appeal.
3006. Lien on baggage—Foreclosure—Sale.
3007. Safe for deposit of valuables—Notice.
3008. Maximum amount landlord bound to receive.
3009. When landlord not responsible for lost wearing apparel.
3010. Responsibility when guest furnished with key to room.
3011. Maximum liability for articles lost from rooms.
3012. Liability for baggage left by guest upon his departure.
3013. Liability of landlord in case of fire or accident.
3014. Liability of landlord not in excess of damage.

3002. Obtaining food or lodging with intent to defraud, a misdemeanor.

SECTION 1. Any person who shall obtain food, lodging, or other accommodation at any hotel, lodging house, furnished room, boarding house, or other eating house, with intent to defraud the owner or keeper thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred (100) dollars, or imprisoned in the county jail not less than five days, nor more than thirty days, or both, in the discretion of the court.

*Legislation. Sec. 3002. Act 1893 p. 121 § 1, entitled:

AN ACT

To Protect Hotel and Boarding House Keepers, and to Make Certain Acts Misdemeanors and to Provide a Punishment Therefor.

3003. Proof of intent.

SEC. 2. Proof that lodging, food or other accommodation was obtained by any false pretense, or by any false or fictitious show or pretense of any baggage, or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed or attempted to remove his or her baggage shall be prima facie proof of the fraudulent intent mentioned in section one of this act.

[Section 1 referred to is section 3002.]

Legislation. Sec. 3003. Act 1893 § 2, cited under § 3002.

3004. Notice to be posted.

SEC. 3. It shall be the duty of every hotel, lodging house, furnished room, boarding house, or other eating house keeper within this state, to keep a copy of the two preceding sections of this act, printed in plain English type, posted upon the inside entrance door of each public sleeping room in such house, and on conviction shall be had under the provisions of this act unless it shall be made to appear to the court that such notice was posted upon the inside entrance of the door of the sleeping room occupied by the person or persons by whom it is alleged the crime has been committed. *Provided, however,* That when such act is committed against persons who do not keep public sleeping rooms in connection with their eating house, it shall be sufficient to show in such case, that said notice was so posted in some public place at or near where guests usually paid their bills.

Legislation. Sec. 3004. Act 1893 § 3, cited under § 3002.

3005. Justices have jurisdiction—Appeal.

SEC. 4. Justices of the peace for the county in which the act complained of shall be committed shall have jurisdiction of cases arising under the terms of this act; and appeals from the judgment of such justice of the peace shall lie to the county courts in such county, in the same manner as is now provided by law for appeals

from judgments of a justice of the peace in other cases of misdemeanor.

[For appeals in justice courts in cases of misdemeanor see section 3869.]

Legislation. Sec. 3005. Act 1893 § 4, cited under § 3002.

3006. Lien on baggage—Foreclosure—Sale.

SEC. 5. When any hotel, inn, boarding-house keeper or the keeper of furnished rooms, may hereafter retain any baggage of any guest by virtue of any lien thereon under the now existing laws of this state, such lien may be foreclosed as follows, viz: The party or parties claiming such lien shall address a letter to the best known postoffice, or the postoffice entered upon the register of names, in such hotel, inn or boarding-house of the party owning the baggage, notifying such party of the amount of the lien claimed, and that the person claiming the same, would on a day and hour stated, which shall not be less than thirty days from the time of mailing of such notice, proceed to sell the baggage of said owner at public or private sale, for the payment of the charges thereon now allowed by law. All sales shown to have been conducted under the notice herein required, shall be deemed valid and sufficient.

[See also section 4013.]

Legislation. Sec. 3006. Act 1889 p. 188 § 4, entitled:

AN ACT

To Protect Hotel and Boarding-House Keepers, and to Make Certain Acts Misdemeanors, and to Provide a Punishment Therefor.

Secs. 1-3 of this Act were repealed by 1891 p. 238. But they were substantially re-enacted in 1893 and are now §§ 3002-3004 supra.

3007. Safe for deposit of valuables—Notice.

SEC. 6. Hereafter every landlord or keeper of a hotel or public inn in this state, who shall provide in the office of his hotel or inn, or other convenient place, a safe, vault, or other suitable receptacle, for the secure custody of money, jewelry, ornaments or other valuable articles, other than necessary baggage, belonging to the guests or patrons of such hotel or public inn, and shall keep posted in a public and conspicuous place in the office, public room

and public parlors of such hotel or public inn, and upon the inside entrance door of every public sleeping room in such hotel or public inn, a notice printed in English, stating such fact, shall not be liable for the loss of any money, jewelry, ornaments or other valuable articles, other than necessary baggage, sustained by such guest or patron by theft or otherwise, unless such guest or patron shall deliver such money, jewelry, ornaments or other valuable articles, other than necessary baggage, to the landlord or keeper of such hotel or public inn, or person in charge of the office of such hotel or public inn, for deposit in such safe, vault or other receptacle; *Provided*, That such liability shall not be greater than the amount at the time of deposit declared by the guest or patron to be the value of the article deposited.

Legislation. Sec. 3007. Act 1907 p. 428 § 1, entitled:

AN ACT

To Regulate the Liability of Hotel-Keepers and Public Inn-Keepers, and to Fix Their Liability in Case of Loss of or Damage to Personal Property Sustained by Guests or Patrons.

CITATIONS.

Action against innkeepers sustained prior to this act for loss of money deposited.—*Clark v. Ball*, 34 C. 223, 82 P. 529.

3008. Maximum amount landlord bound to receive.

SEC. 7. No landlord or keeper of any hotel or public inn shall be obliged to receive such property from any guest or patron for such custody under the provisions of section one of this act, exceeding in value the sum of five thousand (5,000) dollars, nor shall he be liable for any loss thereof by theft or otherwise in any sum exceeding the sum of five thousand (5,000) dollars, unless the landlord or keeper of such hotel or public inn, or person in charge of the office, assumes in writing a greater liability.

[Section 1 above referred to is section 3007.]

Legislation. Sec. 3008. Act 1907 § 2, cited under § 3007.

CITATIONS.

Held prior to this act that the safe keeping of the money of one not a guest was not within the scope of an innkeepers duty.—*Oxford Hotel Co. v. Lind*, 47 C. 57, 107 P. 222.

3009. When landlord not responsible for lost wearing apparel.

SEC. 8. The landlord or keeper of any hotel or public inn shall not be liable to any guest or patron of such hotel or public inn for the loss within his hotel or public inn of any article or articles of wearing apparel or other necessary baggage belonging to any guest or patron unless the same shall have been left within a room assigned to such guest or patron; or shall have been especially entrusted to the care or custody of the landlord or keeper of such hotel or public inn, or to an employe or servant thereof entrusted with the duty of receiving or caring for such article or articles in the hotel or public inn.

Legislation. Sec. 3009. Act 1907 § 3, cited under § 3007.

3010. Responsibility when guest furnished with key to room.

SEC. 9. Whenever the landlord or keeper of any hotel or public inn shall provide the doors of the rooms or sleeping apartments in such hotel or public inn, with a lock and key, in good order and repair, and such rooms and sleeping apartments shall be turned over to the possession of any guest or patron, together with the key to the doors thereof, the landlord or keeper of such hotel or public inn shall not be liable to any guest or patron thereof occupying such room or apartment for loss of any article of personal property left within such room or apartments by such guest or patron while in possession thereof, unless the door or doors in such rooms or apartments were left locked when unoccupied, and after being locked the key or keys thereto were delivered to the person in charge of the office of such hotel or public inn; *Provided*, That if any article of personal property shall be taken by an employe or servant of the landlord or keeper of such hotel or public inn, then the provisions of this section shall not prevent such guest or patron from recovering the value of such article or articles, not to exceed the sum of two hundred (200) dollars for all such articles.

Legislation. Sec. 3010. Act 1907 § 4, cited under § 3007.

3011. Maximum liability for articles lost from rooms.

SEC. 10. The landlord or keeper of any hotel or public inn shall not be liable for the loss of any article or articles left by any guest or patron in any room or rooms assigned to or occupied by such guest or patron, in any event, greater than the sum of two hundred (200) dollars for all articles which may be lost by said guest or patron, except by an agreement in writing made by the landlord or keeper of such hotel or public inn, or person in charge of the office, assuming a greater liability.

Legislation. Sec. 3011. Act 1907 § 5, cited under § 3007.

3012. Liability for baggage left by guest upon his departure.

SEC. 11. In case any person who has been the guest or patron of any hotel or public inn shall cease to be such guest or patron, and shall leave with the landlord or keeper of such hotel or public inn any baggage or other personal property, for safe keeping, and the landlord or keeper shall accept and receive the same for safe keeping, and shall make no charge for services or storage in keeping such property, then such landlord or keeper of a hotel or public inn shall be liable only as a gratuitous bailee and as such shall be liable for no sum greater than fifty (50) dollars.

Legislation. Sec. 3012. Act 1907 § 6, cited under § 3007.

3013. Liability of landlord in case of fire or accident.

SEC. 12. The landlord or keeper of any hotel or public inn shall not be liable for loss of or damage to the property of any guest or patron of such hotel or public inn by fire or by any unforeseen causes or by inevitable accident, unless such loss or damage shall occur on account of his negligence or the negligence of his servants or employees.

Legislation. Sec. 3013. Act 1907 § 7, cited under § 3007.

3014. Liability of landlord not in excess of damages.

SEC. 13. None of the provisions of this act shall be construed so as in any event to render the landlord or keeper of a hotel or

public inn in this state liable in a greater sum than the actual loss or damage sustained.

[For restrictions on hotels serving game and fish see sections 2811-2813.]

[For building restrictions as to hotels and lodging houses, see Chapter 18, Buildings.]

Legislation. Sec. 3014. Act 1907 § 8, cited under § 3007.

CHAPTER LXVII.

HUSBAND AND WIFE.

Section.

3015-3020. (Repealed.)

3015-A. Neglect to support wife or child.

3015-B. Suspending sentence.

3015-C. Requisition for defendant.

3015-D. Jurisdiction—Verification of complaint.

3015-E. Wife may testify.

3015-F. Repeal.

3015-G. Venue.

3015-H. Idem.

3015-J. Limitation as to age of child.

3015-K. Final judgment—Sci. Fa.

3015-3020 (Repealed.)

See note to § 3015-F.

CITATIONS.

An information need not allege that defendant is a resident. Court may fix penalty of bond and terms of payment. Immaterial that wife has means of her own.—*Poole v. Peo.*, 24 C. 512, 52 P. 1025.

The Act of 1903 (§ 3018 repealed) did not by implication repeal § 1 of Act of 1893 (§ 3015 repealed.)—*Campbell v. Peo.*, 42 C. 228, 94 P. 256.

The act of 1893 does not affect the general powers of a court of equity to compel a husband to pay alimony for maintenance.—*Dye v. Dye*, 9 A. 322, 48 P. 314.

3015-A. Neglect to support wife or child.

SECTION 1a. Any man who shall wilfully neglect, fail or refuse to provide reasonable support and maintenance for his wife, or for his legitimate or illegitimate child or children, under sixteen

years of age, or who wilfully fails, refuses or neglects to provide proper care, food and clothing in case of sickness for his wife or such legitimate or illegitimate child or children, or the mother of his illegitimate child during childbirth and attendant illness, or any such child or children being legally the inmates of a state or county home, or school for children in this state, or who shall wilfully fail or refuse to pay to a trustee, who may be appointed by the court to receive such payment, or to the board of control of such home or school the reasonable cost of keeping such child or children in said home, or any man being the father of a child or children, under sixteen years of age, who shall leave such child or children or his wife with intent to abandon such wife or child or children, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed one year, unless it shall appear that owing to physical incapacity or other good cause he is unable to furnish the support, care and maintenance herein required; *Provided*, That in case of any conviction under this act the court before which such conviction is had, may in lieu of the penalty herein provided accept from the person convicted a bond running to the people of the state of Colorado with sufficient surety to be approved by the court in such penal sum not exceeding one thousand dollars, as the court shall fix, conditioned that he will comply with the provisions of this act, or perform the conditions required by the court for his compliance with this act in case he is placed on probation as hereinafter provided.

Legislation. Sec. 3015-A. Sec. 1 of Act of 1911, S. B. No. 43, entitled:

AN ACT

To Compel Men to Support Their Wives and Children and to Provide for the Punishment of the Violation Thereof. (Approved May 26, 1911.)

3015-B. Suspending sentence.

SEC. 1b. In the interest of justice, and for the protection of such wife, child or children, the court may suspend any sentence imposed or which may be imposed against any person under this act upon conditions to be named by the court, which conditions shall require such person to perform his duty towards his wife and

child or children or the mother of his child and in all respects comply with the provisions of this act. And so long as such conditions are complied with such sentence may be suspended, but upon the failure of such person to comply with such conditions, or the undertaking or conditions in any bond or terms of probation, he may be arrested by the sheriff or other officer on warrant issued by the court or be ordered to appear before the court to show cause why final judgment should not be entered or final sentence passed or enforced. Whereupon the court may enter a final judgment, or impose or enforce final sentence, if such judgment or sentence has not been imposed, and the beginning of any imprisonment in any such case shall commence from the time such sentence is finally passed or directed to be enforced or the court may from time to time for good cause shown modify any order or conditions of probation made in such case and take a new bond or undertaking or a new promise from any such defendant and may further suspend any sentence as may be just and proper and in conformity with the spirit, purpose or intention of this act.

Legislation. Sec. 3015-B. Sec. 2 of Act of 1911, cited under § 3015-A.

3015-C. Requisition for defendant.

SEC. 1c. If it shall appear to the court upon the filing of any complaint, information or indictment against any person for violation of this act that such person is beyond the jurisdiction of the county or state, it shall be the duty of the county commissioners of such county in which such action is commenced, upon the order of the court, to furnish such sum of money as may be necessary for the expenses of the sheriff or other proper officer to arrest and return such person to the jurisdiction of the state and county in which such action is commenced. It shall be the duty of the district attorney or other proper officer in any such case, where the defendant is beyond the state of Colorado, to take all necessary and proper steps and proceedings to obtain a requisition from the governor of the state of Colorado to the governor of the state in which such defendant may be found in order to secure his return from such state to the jurisdiction in which such case is being prosecuted.

Legislation. Sec. 3015-C. Sec. 3 of Act of 1911, cited under § 3015-A.

3015-D. Jurisdiction—Verification of complaint.

SEC. 1d. All courts of record in this state shall have jurisdiction under this act and a complaint or information for the violation of this act may be filed in any such court of record by any humane society or probation officer, or before any justice of the peace of the county in which such offense defined in the preceding section is committed.

When such complaint is filed by any other officer or person than the district attorney, it shall be made under oath as required by law in the case of filing complaints before a justice of the peace, and where such complaint is filed before such justice it shall be the duty of such justice to issue a warrant for the arrest of any person charged with such offense, whereupon such person shall be brought before said justice of the peace, who shall proceed to have a preliminary investigation of said charge, and if in the opinion of such justice there shall be sufficient evidence to sustain such charge, the defendant shall be bound over to the county or the district court of the county as in other cases.

Any justice of the peace shall have authority to continue any such case from time to time before final order is made binding over such party to the county or district court if such defendant shall give a bond to the people of the state of Colorado, as provided in section 1 of this act to keep such promises or conditions as may be imposed by such justice for complying with the provisions of section 1 of this act; and the said justice shall have authority to order the defendant to appear before the court from time to time to ascertain if any conditions for compliance with this act imposed by said justice are being complied with, and may at any such time enter a final order in such cause binding over such defendant to the county or district court as in other cases of felony. When any such case is continued from time to time by any justice of the peace or any judge of a court of record, or where any period of probation is permitted under the provisions of this act, the time thereof shall not exceed two years from the date of filing such case, and at any time within such period of two years where any judge before whom such case is pending is satisfied that the defendant in good faith intends to comply with the provisions of this act, such cause may be dismissed and the

defendant discharged with or without a final conviction of the offense mentioned in section 1 of this act.

Any person prosecuted or proceeded against under this act shall have the right to demand a speedy hearing and trial as in other cases of felony and a prosecution under this act shall be a bar to all prosecutions for the same offense under any other act. As part of the conditions of a suspended sentence under this act the court may direct that any person found guilty under this act may be committed to any common jail or workhouse for a period not to exceed ninety days.

Legislation. Sec. 3015-D. Sec. 4 of Act of 1911, cited under § 3015-A. Condemning a man to jail "as part of the conditions of a suspended sentence" under the last paragraph of the text would certainly seem a bar to any final sentence to further punishment. Const. § 18 Art. II.

3015-E. Wife may testify.

SEC. 1e. In all proceedings or prosecutions under this act a wife shall be a competent witness against her husband with or without his consent.

Legislation. Sec. 3015-E. Sec. 5 of Act of 1911, cited under § 3015-A.

3015-F. Repeal.

SEC. 1f. Chapter 74 of laws of 1893, being an act entitled "An act to compel the support of wives and children," approved March 31, 1893, and chapter 142 of the laws of 1903, being an act entitled "An act to compel the support of wives and children by persons chargeable by law with the maintenance thereof, and making the failure so to do a misdemeanor, and providing penalties therefor," approved April 11, 1903, and all acts and parts of acts in conflict with this act are hereby repealed.

Legislation. Sec. 3015-F. Sec. 6 of Act of 1911, cited under § 3015-A. The Act of 1893 cited in the text was Sections 3015-3017, and the 1903 Act was §§ 3018-3020.

3015-G. Venue.

SEC. 1g. If the offense charged is desertion or abandonment or neglect or refusal to provide such child or children or wife with the necessary and proper home, care, food and clothing, as provided in section 1 of this act, the offense shall be held to have been

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committed in any county of this state in which such child or children or wife may be at the time such complaint is made.

Legislation. Sec. 3015-G. Sec. 7 of Act of 1911, cited under § 3015-A. This section and the next seem to be in violation of Const., Art. II. § 16.

3015-H. Idem.

SEC. 1h. If the offense charged is the neglect or refusal to pay to the trustees of such children's home or school, or the trustee who may be appointed by the court to receive such payment, the reasonable cost of keeping such child or children, the offense shall be held to have been committed in the county where such children's home or school may be situated.

Legislation. Sec. 3015-H. Sec. 8 of Act of 1911, cited under § 3015-A. See note to Sec. 3015-G.

3015-J. Limitation as to age of child.

SEC. 1j. Citizenship or residence once acquired in this state by any father of any legitimate or illegitimate child living in this state shall be deemed for all the purposes of this act to continue until such child has arrived at the age of sixteen years, provided said child so long continues to live in this state; and in case of prosecution under this act for the violation of any of the provisions of this act, such citizenship or residence shall likewise be deemed to continue so long as such wife or mother resides in this state and is entitled to the support or maintenance mentioned in section 1 hereof.

Legislation. Sec. 3015-J. Sec. 9 of Act of 1911, cited under § 3015-A.

3015-K. Final judgment—Sci. fa.

SEC. 1k. That upon a failure of any person to comply with any undertaking or bond as prescribed in section 1 of this act, he may be arrested by the sheriff or other officer, on a warrant issued by the court, and brought before the court for final trial, judgment or sentence, and in such case the court may declare the undertaking or bond forfeited and terminated, and may enter final judgment or impose or enforce a final sentence against such person,

as though it had never been suspended, and in any such case a final judgment may be rendered and entered by such court in behalf of the people of the state of Colorado against the surety or sureties on the bond of any such person without the necessity of bringing a separate suit to recover the penalty of any such undertaking or bond so forfeited, and execution may issue on such judgment against such sureties for the collection of the amount of such bond or undertaking, as in civil cases; *Provided, however,* That no execution shall issue in any such case against the sureties, until a writ of scire facias shall issue and be served on such sureties, as summons are served in civil cases requiring them to show cause before the court, upon a day to be named therein not less than ten days after the service of said writ, why execution should not be issued against them. Any moneys collected or paid upon any such execution or in any case upon said bond shall be turned over to the clerk of the court in which such bond is given, to be applied to the care and maintenance of the child or children, wife or mother, for the care or support of whom such conviction was had, in such manner and upon such terms as the county court may direct; *Provided,* That if it shall not be necessary in the opinion of the court to use such fund, or any part thereof, for such purposes mentioned in this section, the same shall be paid into the county treasury and become a part of the funds of such county.

Legislation. Sec. 3015-K. Sec. 10 of Act of 1911, cited under § 3015-A.

3015-3020 (Repealed.)

See note to § 3015-F.

3021. Joint liability for family expenses.

SEC. 7. The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

[Husband and wife must join in chattel mortgage or sale of household goods, see section 514.]

[Head of family defined, see section 5541.]

[Wife must join in assignment of husband's wages. Section 7006.]

[Wife must consent to adoption of child. Section 527.]

[Wife joint guardian with husband. Section 2912.]

[For restriction of husband or wife in devising property see section 7070.]

[When husband responsible for crimes of wife. Section 1616.]

Legislation. Sec. 3021. Act 1891 p. 238 § 1, entitled:

AN ACT

In Relation to the Liabilities of Husband and Wife.

See the chapters entitled "marriages" and "married women."

CITATIONS.

Servants and domestics are part of the "family."—*Perkins v. Morgan*, 36 C. 362, 85 P. 640.

This section referred to in holding that a husband is not liable for the tort of his wife unless committed by his direction.—*Schuyler v. Henry*, 42 C. 370, 94 P. 360. (Dissenting opinion 391).

Wife held liable for a purchase by a husband of a buggy for family use.—*Houck v. La Junta H. Co.* (April 1911), 114 P. 645.

This section cannot be given a retroactive effect.—*Kelly v. Cannon*, 6 A. 466, 41 P. 833.

Under a lease made by the husband the wife would be liable for rent for the time the premises were occupied by the family, but not liable for damages for breach of the lease.—*Straight v. McKay*, 15 A. 61, 60 P. 1107.

The wife is liable for wearing apparel worn by the husband. Evidence as to family relations necessary.—*Gilman v. Matthews*, 20 A. 171, 77 P. 366.

CHAPTER LXVIII.

IMPRISONMENT FOR DEBT.

Section.

3022. No imprisonment for debt on contract.

3023. Execution against the body.

3024. When action founded on tort execution against the body may issue.

3025. Verdict—Judgment—Term of imprisonment—Release.

3026. Poor person—Affidavit—Plaintiff pay costs.

3022. No imprisonment for debt on contract.

SECTION 1. There shall be no imprisonment or arrest for debt in this state, in any case, upon any contract, expressed or implied.

Legislation. Sec. 3022. Act 1861 p. 67 § 1. R. S. p. 358 § 1. G. L. § 1351. G. S. § 1646.

3023. Execution against the body.

SEC. 2. No execution shall hereafter issue against the body of any defendant in a civil action, except as hereinafter provided.

Legislation. Sec. 3023. Act of 1877 G. L. § 1589. G. S. § 1648.

G. L. § 1587 repealed Act of 1861 p. 236 §§ 67, 68, R. S. p. 412 §§ 67, 68, which allowed, in actions of trespass and trover before a justice, the arrest of the body of defendant upon affidavit, set forth in § 67 and execution against the body upon judgment of trespass or trover. It also repealed R. S. p. 371 §§ 6, 7 on the same subject which were §§ 6, 7 Act 1861 p. 265.

3024. When action founded in tort execution against the body may issue.

SEC. 3. In any civil action pending or hereafter begun in any court of record or before any justice of the peace, where it shall appear from the summons and other papers in the cause, that the action is founded upon tort, and upon trial of the said cause the finding shall be in favor of the plaintiff or plaintiffs, and the

verdict of the jury or the finding of the court, if tried without a jury, shall state that in committing the tort complained of, the defendant or any one or more of the defendants if there be more than one, was or were guilty of either malice, fraud or wilful deceit, then, and in any such case, the plaintiff may have execution as hereinafter provided against the body of any defendant against whom such finding was had or any judgment rendered on any finding as aforesaid; *Provided*, That in no case shall an execution issue against the body of a person when the person shall have been convicted in a criminal prosecution for the same wrong.

Legislation. Sec. 3024. Act 1877. G. L. § 1590. G. S. § 1649. See § 3023.

CITATIONS.

This section cited in an action by a husband for enticing away of his wife.—*French v. Deane*, 19 C. 512, '36 P. 612.

The validity of a judgment committing a defendant to imprisonment under this and sec. 3025 could not be assailed on habeas corpus by evidence showing that a defense existed which, if pleaded, would have defeated the recovery.—*Peo. v. Dist. Court*, 22 C. 425, 45 P. 403.

This section contemplates an aggravated case—one in which the wrong is premeditated and intentional. Insufficient evidence to justify body execution.—*Geraghty v. Randall*, 18 A. 200, 70 P. 769.

3025. Verdict—Judgment—Term of imprisonment—Release.

SEC. 4. If the finding of the court or jury, as the case may be, in any such action, shall contain a statement as is provided in section four of this act, it shall be the duty of the court or justice of the peace before which such case shall be tried, to enter upon its or his docket, in the discretion of the court, according to the aggravation of the circumstances as proved at the trial, the term for which a defendant or defendants may be committed to jail on a writ of execution against the body in such case. Such term not to exceed one year in any case, and the execution and mittimus shall state the time so fixed by the court; *Provided*, That no execution shall issue against the body if the amount of the judgment shall have been paid, and that any person committed to jail by

such process shall be released therefrom at once, upon the payment of such judgment.

[Section 4 referred to is section 3024.]

Legislation. Sec. 3025. Act 1877. G. L. § 1591. G. S. § 1650. See § 3023.

CITATIONS.

The validity of a judgment committing a defendant to imprisonment under this and sec. 3024 could not be assailed on habeas corpus by evidence showing that a defense existed which, if pleaded, would have defeated the recovery.—*Peo. v. Dist. Court*, 22 C. 425, 45 P. 403.

3026. Poor person—Affidavit—Plaintiff pay costs.

SEC. 5. All costs, charges and expenses of such imprisonment shall be paid out of the county treasury of the county in which such action is tried and imprisonment had, when the party plaintiff shall, before such imprisonment takes place, present to the officer having the execution his affidavit that he is a poor person, and not able to pay the costs of such imprisonment; otherwise, all such costs shall be paid by the plaintiff, and the said judgment shall not be satisfied in whole or in part by any such imprisonment; but the plaintiff or plaintiffs may have execution against the goods and chattels, lands and tenements of the defendant or defendants, whether against the body or not, and shall not take the body on execution but once in any such action.

Legislation. Sec. 3026. Act 1877. G. L. § 1592. G. S. § 1651.

CHAPTER LXIX.

INDUSTRIAL SCHOOLS.

- I. INDUSTRIAL SCHOOL FOR BOYS.—3027-3045.
 - II. INDUSTRIAL SCHOOL FOR GIRLS.—3046-3086.
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I. INDUSTRIAL SCHOOL FOR BOYS.

Section.

- 3027. Industrial school established.
 - 3028. Old school of mines converted to use—Conveyance.
 - 3029. Board of control—Appointment—Term of members—Vacancies.
 - 3030. Compensation and mileage of board—Meetings—Duties and bond of superintendent—Expenses of institution.
 - 3031. Biennial report of board.
 - 3032. Board make rules—Superintendent, agents, servants.
 - 3033. One member visit other schools—Expenses.
 - 3034. No debt shall be created—Expenses limited.
 - 3035. Duty of board to receive pupils.
 - 3036. Commitments to school—Term—Jurisdiction of courts.
 - 3037. Parents and guardians may indenture boys to school.
 - 3038. Treatment of pupils—Board may return certain pupils—Duty of board—Of magistrate.
 - 3039. When board may discharge or bind.
 - 3040. Persons caring for pupil—Compensation—Proviso as to schooling.
 - 3041. Fees of officers in transporting prisoners.
 - 3042. Aiding escape—Penalty—Boy escaping—Penalty.
 - 3043. Appeal—Magistrate certify to superintendent cause of commitment.
 - 3044. Equal privileges to clergymen—Duty of board.
 - 3045. Highways through grounds.
-

3027. Industrial school established.

SECTION 1. There shall be established in this state an institution under the name and style of the "State Industrial School."

Legislation. Sec. 3027. G. S. § 1652, Act 1881 p. 132 § 1, entitled:

AN ACT

To Establish a State Industrial School and for the Maintenance and Government of the Same.

Infants under ten can not be convicted of crime. § 1612. See also § 2054.

3028. Old school of mines, converted to use—Conveyance.

Sec. 2. The old school of mines building and grounds at or near the city of Golden, in the county of Jefferson, are hereby selected as, and converted into an establishment and site for the state industrial school; and upon the taking effect of this act, or as soon thereafter as practicable, the trustees of the school of mines shall convey the same in fee simple for such purpose to the board of control of the state industrial school without charge therefor.

Legislation. Sec. 3028. G. S. § 1661, Act 1881 § 10, cited under § 3027.

3029. Board of control—Appointment—Term of members—Vacancies.

SEC. 3. The general supervision and government of said industrial school shall be vested in a board of control, to consist of three members, who shall be appointed by the governor, by and with the advice and consent of the senate during the session of the general assembly, the members of which board shall hold their offices for the respective terms of two, four and six years from the first day of March, A. D. 1881, and until their successors shall be appointed and qualified, said respective terms of office to be designated in their several appointments; and thereafter there shall be one of said board appointed every two years, whose term of office shall continue for six years, or until his successor is appointed and qualified; and whenever any vacancy shall occur in said board, by the death, resignation or otherwise, the governor shall fill the same by appointment, and the appointee shall hold only for the unexpired term of the person whose place he is appointed to fill.

The members of said board of control shall constitute a body corporate under the name and style of the "Board of control of

the state industrial school," with the right of suing and being sued, and of making and using a common seal, and of altering it at pleasure. A majority of the board shall constitute a quorum for the transaction of any business lawful to be done by said board.

Legislation. Sec 3029. G. S. § 1653. Act 1881 § 2. cited under § 3027.

CITATIONS.

A comparison of this section with sec. 6 art. IV of the constitution shows that an appointee to fill a vacancy by virtue of the provisions of the statute holds for the unexpired term; one appointed under the constitution holds until the next meeting of the senate.—*Peo. v. Osborne*, 7 C. 606-612, 4 P. 1074.

3030. Compensation and mileage of board—Meetings—Duties and bond of superintendent—Expenses of institution.

SEC. 4. The members of the board of control shall each be allowed the sum of three hundred (300) dollars per annum, and mileage at ten (10) cents per mile, for each mile necessarily traveled in the discharge of their duties, to be paid quarterly, as other lawful expenses of said institution are paid. The board of control shall meet regularly at the industrial school, on the third Wednesday in March, June, September and December, in each year, and at such other times and places as they shall deem advisable, to audit bills, and transact all other necessary business. At their regular meeting in March in each year, they shall elect, of their own body, a president and secretary, who shall hold their offices for one year, or until their successors shall be elected and qualified. All vouchers for the purchase of supplies or other indebtedness of the industrial school, shall be signed by the president and secretary of the board of control, and certified by the superintendent, and upon presentation of same to the auditor of state, he shall draw his warrant upon the state treasurer in favor of the claimant, out of any moneys appropriated for the care and support of the industrial school. The superintendent of the industrial school shall keep, or cause to be kept, an accurate account of all moneys received from the sale of articles manufactured at said institution, and of the moneys expended for machinery and material, care and support of said institution, and other things con-

ned with any business or trades, that may be deemed advisable by the board of control, to be carried on at said school. He shall have charge of said business, and temporary custody of moneys so received, and at the end of every month he shall render to the state treasurer an itemized account of the moneys so received, and shall pay the same over to the state treasurer, to be placed to the credit of the industrial school fund, taking a duplicate receipt for same, one copy of which he will give to the secretary of the board of control, the other to be transmitted to the auditor of state. The money so paid to the state treasurer shall be used for the necessary expenses of said school, and in the same manner as a regular appropriation. The said superintendent shall give a bond, payable to the state of Colorado, in the penal sum of ten thousand (10,000) dollars, with good and sufficient sureties, to be approved by the board of control, and auditor of state, conditional that he will faithfully discharge and perform his duties as such superintendent; that he will pay over to the state treasurer all moneys which may come into his hands belonging to said institution, as provided by law, which said bond, when approved, shall be filed in the office of the secretary of state.

[Inmates may make wearing apparel for state institutions. Section 842.]

Legislation. Sec. 3030. Act 1885 p. 253 § 1, superseding Act of 1888 p. 35 §§ 4, 5 and 3, G. S. §§ 1655, 1656, 1658 and Act of 1881 p. 133 § 5.

3031. Biennial report of board.

SEC. 5. The board of control, on the tenth day of November preceding each meeting of the general assembly, shall make a report to the superintendent of public instruction, which report, with that of the officers and instructors of the institution, shall be transmitted to the general assembly with the report of the said superintendent. Said report shall contain a detailed statement of their operations and of all expenditures made by them in behalf of said institution.

Legislation. Sec. 3031. Act 1881 p. 132 § 3, cited under § 3027.

3032. Board make rules—Superintendent, agents, servants.

SEC. 6. It shall be the duty of the board of control to pre-

pare and carefully digest and mature a system of government for said industrial school, embracing such rules and regulations as may be deemed necessary for preserving order, for enforcing discipline, for imparting instruction, for preserving health, and generally for the proper physical, intellectual and moral training of the youth committed to said school. And they may appoint a superintendent and such other officers, agents and servants as they may consider necessary to transact the business of said school, and may designate their duties and salaries.

[Hazing in state institutions forbidden. Section 1661-1665.]
[For duties of superintendent, see section 3030.]

Legislation. Sec. 3032. G. S. § 1657 Act 1881 § 6, cited under § 3027.

3033. One member visit other schools—Expenses.

SEC. 7. For the purpose of maturing said system of government and discipline, it shall be competent for said board to authorize one of their number to visit some similar institution, now in operation, and of best repute, and, by a personal inspection and investigation, to acquire an insight into the principles and practical workings of the model system thus selected, for the information and benefit of said board; the expenses actually incurred in such visit and investigation to be paid in the same manner as other lawful expenses of the institution.

Legislation. Sec. 3033. G. S. § 1659 Act 1881 § 7, cited under § 3027.

3034. No debt shall be created—Expenses limited.

SEC. 8. The board of control is hereby prohibited from creating any debt against the industrial school, or in any manner encumbering the same, or from incurring any expense beyond its ability to pay from the appropriations made therefor.

Legislation. Sec. 3034. G. S. § 1660. Act 1881 § 9, cited under § 3027.

3035. Duty of board to receive pupils.

SEC. 9. It shall be the duty of the board of control to receive, to the extent of the means placed at their disposal, and of the accommodations afforded by the buildings and grounds belonging to said school, all persons committed to their care and

guardianship, under the provisions of this act, and to keep the same during their minority, or until discharged by law, or under the rules of said board.

Legislation. Sec. 3035. G. S. § 1662 Act 1881 § 13, cited under § 3027.

3036. Commitments to school—Term—Jurisdiction of courts.

SEC. 10. When any boy under the age of sixteen years and over the age of ten years shall be convicted of any offense known to the laws of this state, and punishable by fine or imprisonment or both, except such as may be punishable by death or imprisonment for life, the court before whom such conviction shall be had, may at its discretion sentence such boy to the state industrial school or to such punishment as is now or may hereafter be prescribed by law for the same offense. All commitments to the state industrial school shall be for the term of the boy's minority, unless he shall be sooner discharged by the board of control, as hereinafter provided, and whenever any boy shall be discharged therefrom as reformed or as having arrived at the age of twenty-one years, such discharge shall be a full and complete release from all penalties and disabilities which may have been created by such sentence. The district and county courts and the judges thereof, in their respective counties, shall have exclusive original jurisdiction to try all cases arising under the provisions of this act. And such cases shall be summarily tried before the court or the judge of the court and without the intervention of a jury, unless a jury shall be demanded. Cases arising under this act may be instituted upon the sworn complaint of the district attorney or his deputy, or any credible person. No boy after sentence shall be confined in any county or city jail, but the officer to whom the writ of commitment shall be delivered shall at once convey such boy to the state industrial school.

[See also sections 536 and 594.]

[Board of county visitors shall be notified of proceedings to commit boy. Section 510.]

[For jurisdiction of courts see also sections 553, 562, 587 and 1590.]

Legislation. Sec. 3036. Act 1893 p. 294 § 1, amending G. S. § 1663, Act 1881 p. 135 § 14, cited under § 3027. Sec. 2 Act 1893 p. 295 repeals § 17 of said Act of 1881.

3037. Parents and guardians may indenture boys to school.

SEC. 11. Any parent may indenture his or her boy, or any guardian may indenture a male ward, to the state industrial school for such length of time as may be agreed upon by such parent or guardian, and the board of control of said school, on condition that such parent or guardian shall pay the expenses of such boy or ward so indentured as aforesaid, while at said school.

Legislation. Sec. 3037. G. S. § 1865, Act 1881 p. 137 § 19, cited under § 3027.

3038. Treatment of pupils—Board may return certain pupils—Duty of board—Of magistrate.

SEC. 12. Each and every boy who shall be legally committed to said school as provided in this act shall be clothed, fed, disciplined, instructed, employed and governed, under the direction of the board of control of said school, until he either be reformed and discharged, or until he shall have arrived at the age of twenty-one years, and it shall be lawful for said board of control to place in the care of any resident of this state, who is the head of a family and of good moral character, any of the said boys of said school, on such conditions and with such stipulations as the board may establish: *Provided*, No boy shall be placed in the care of any person who shall be engaged in the sale of intoxicating drinks or who is in the habit of getting drunk. The board of control shall have power, and it shall be their duty to return any boy to the authorities of the county or city from which he shall have been received, whom said board may deem to be an improper subject for their care and management, or who shall be found to be incorrigible, or whose continuance in the school they may deem prejudicial to the management or discipline thereof, or who ought in their judgment for any other cause to be returned from said school. In every such case it shall be the duty of said board of control to transmit to the court, magistrate or justice by whom said boy was committed to said school a statement of the reasons of said return, and it shall be the duty of the authorities of the city or county to whom said boy shall be returned to produce said boy before the court, magistrate or justice by whom said boy was

committed, or his successor in office, as soon as the same can reasonably be done; and such court, magistrate or justice shall have power thereon to make such order, and have such proceedings as would have been legal in the first instance, and would have been made or had in the case if the boy had not been sent to the industrial school. Said board of control shall also be authorized, when, in their judgment, it may be deemed proper or expedient to give boys leave of absence in writing, with conditions therein expressed, for a limited time or during good behavior, and in case of misconduct or other satisfactory reasons, they may reclaim and return to the care of the school for such time as he was originally sentenced without other trial or commitment or process of law, any boy granted such leave of absence, and his further detention shall in no way be affected thereby, either to his prejudice or advantage. Said board of control shall also have power to return any boy to his parents or other guardians when they shall have become bound in sufficient sureties for the good behavior and care of such boy.

Legislation. Sec. 3038. G. S. § 1667, Act 1881 § 21, cited under § 3027.

3039. When board may discharge or bind.

SEC. 13. It shall be lawful for the board of control, whenever in their discretion they may deem anyone of the boys detained in the said institution to have become so far reformed as to justify his discharge, to liberate such boy, or to bind him by articles of indenture for that purpose to be entered into, to any suitable person who will engage to instruct such boy in some proper art or trade, according to the terms of said indenture.

Legislation. Sec. 3039. G. S. § 1668, Act 1881 § 22, cited under § 3027.

3040. Persons caring for pupil—Compensation—Proviso as to schooling.

SEC. 14. Any person other than parent or guardian who will take and care for any boy, as above provided, for one year, having faithfully fulfilled all the conditions prescribed to the satisfaction of the board, if the board of control shall have so agreed, shall be entitled to receive from the funds of the industrial school fifty

dollars; at the end of two years, a like sum on like conditions; *Provided*, Said boy shall be placed at school at least three months in each year; and any boy who is placed in the care of any person as above provided, having remained with said person and faithfully performed the duties required of him by said board for said two years, and until he shall have arrived at the age of twenty-one years, shall be entitled to receive from the funds of said institution one hundred dollars.

Legislation. Sec. 3040. G. S. § 1670, Act 1881 § 23, cited under § 3027.

3041. Fees of officers in transporting prisoners.

SEC. 15. It shall be the duty of the sheriff, under sheriff, or deputy, or in case of their absence, of any constable or any suitable person appointed by the court for such purpose, to convey any boy committed under the provisions of this act to the school aforesaid, and all magistrates and officers performing services under this act shall be paid the same fees as are allowed for similar services in criminal cases, such fees to be paid by the county from which such boy was committed.

[For fees for transporting prisoners see section 2532.]

Legislation. Sec. 3041. Act 1893 p. 295 § 1, amending Act 1881 p. 138 § 20, cited under § 3027. G. S. § 1666.

3042. Aiding escape—Penalty—Boy escaping, penalty.

SEC. 16. Every person who shall aid or abet any boy in escaping from the state industrial school, or who shall knowingly harbor such boy, or aid in abducting him from persons to whose care and service he has been properly committed, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned for not more than sixty days. And if any boy shall escape or absent himself without leave from said school, or from persons to whose care and service he has been properly committed, whenever said boy is reclaimed and returned to said school, the time of such unlawful absence shall be excluded in computing the time at which his sentence shall expire.

Legislation. Sec. 3042. G. S. § 1664, Act 1881 p. 140 § 27, cited under § 3027.

3043. Appeal—Magistrate certify to superintendent cause of commitment.

SEC. 17. Nothing in this act shall be construed to prevent any accused person from taking an appeal from the decision of any court, police magistrate or justice of the peace under such forms as are now or may hereafter be prescribed by law.

Any court, magistrate or justice by whom any person is committed to the industrial school, under the provisions of this act, shall certify to the superintendent of said school the cause of said commitment, embracing all important facts connected therewith, and the age of all persons so committed, as near as can be ascertained, and the age so certified shall be held to be the correct age of such persons for the purposes of this act.

Legislation. Sec. 3043. G. S. § 1664 § 18, cited under § 3027.

3044. Equal privileges to clergymen—Duty of board.

SEC. 18. Equal privileges shall be granted to clergymen of all religious denominations to impart religious instruction to the inmates of said industrial school, and every opportunity shall be allowed such clergymen to give to the inmates belonging to their respective denominations such religious and moral instruction as such clergymen may desire, and the board of control shall prescribe reasonable times and places, not inconsistent with the proper management of said school, when and where such instruction may be given, and all such instruction shall be open to all who may choose to attend.

Legislation. Sec. 3044. G. S. § 1673 § 26, cited under § 3027.

3045. Highways through grounds forbidden.

SEC. 19. No person or persons, corporation or body politic, shall be permitted to open, lay out or construct any road or highway, either public or private, under any pretense whatever, upon or through any ground owned or occupied by the said school without the consent of the board of control.

Legislation. Sec. 3045. G. S. § 1672 § 25, cited under § 3027.

II. INDUSTRIAL SCHOOL FOR GIRLS.

Section.

- 3046. Industrial school for girls established.
- 3047. Board of control—Appointment—Term—Vacancies—Superintendent.
- 3048. Legal succession of board.
- 3049. County committing liable for maintenance—Monthly statement rendered county.
- 3050. State treasurer ex officio treasurer.
- 3051. Powers of board.
- 3052. Meetings—Quorum—President and secretary.
- 3053. Board receive all persons committed.
- 3054. Inmates under direction of board.
- 3055. Regulations established by board.
- 3056. Rules of government established by board.
- 3057. Board inquire into treatment of inmates and general management of school—Witnesses.
- 3058. Credit for good behavior.
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- 3060. Release of inmate.
- 3061. Inmates may be placed in homes.
- 3062. Annual report of board.
- 3063. Financial agent—Duties.
- 3064. Debt not to be created—Expenses limited.
- 3065. Superintendent—Duties.
- 3066. Bond of superintendent.
- 3067. Superintendent keep daily journal—Report to board.
- 3068. Superintendent account for moneys received and expended.
- 3069. Board may inspect institution.
- 3070. Register of inmates—Contents.
- 3071. Abstract of record of each girl made to board.
- 3072. Parole of girl.
- 3073. Incurable girl returned to home.
- 3074. Commitments to school—Term.
- 3075. Jurisdiction of courts—Summary proceedings.
- 3076. Peace officers empowered to arrest girls frequenting public places.
- 3077. Cause of commitment certified to superintendent.
- 3078. Commitments to school—Return of girl to county committing.
- 3079. Cases instituted by indictment or information.
- 3080. Sheriff transport girl to school.
- 3081. Girl sentenced not confined in jail—Appeal.
- 3082. Term of commitment.
- 3083. School shall be non-sectarian.
- 3084. Salary of officers and employes payable monthly.
- 3085. Vouchers for payment of supplies.
- 3086. Penalty for aiding escape or harboring escaped girl.

3046. Industrial school for girls established.

SEC. 20. That there is hereby established at or near Denver, Colorado, "The State Industrial School for Girls."

Legislation. Sec. 3046. Act 1897 p. 68 § 1, entitled:

AN ACT

Establishing the State Industrial School for Girls, and to Repeal An Act Entitled "An Act Establishing a State Home and Industrial School for Girls."

This Act superseded Act 1887 p. 279.

CITATIONS.

The act of 1887 manifested no intention to create a liability against the state.—*Senate Bill, In re*, 23 C. 510, 48 P. 540.

3047. Board of control—Appointment—Term—Vacancies—Superintendent.

SEC. 21. The general supervision and control of said institution shall be vested, as at present, in a board of control, consisting of five members, three of whom shall be women. The board, excepting as hereinafter provided, shall be appointed by the governor, by and with the advice and consent of the senate, during the session of the general assembly, and the term of office of each member thereof shall be five years, or until their successors shall be appointed and qualified, their respective terms of office to be designated in their several appointments; and whenever any vacancy shall occur in said board, by death, resignation, or otherwise, the governor shall fill the same by appointment, and the appointee shall hold only during the unexpired term of the person whose place he or she is appointed to fill. One member of said board shall be appointed by the governor as aforesaid during the session of the present general assembly, and every year thereafter there shall be one member appointed to take the place of the outgoing member. The board shall choose some suitable woman to act as general superintendent, who shall hold her office during the pleasure of the board.

[For bond of superintendent, see section 3066.]

Legislation. Sec. 3047. Act 1897 § 2, cited under § 3046.

3048. Legal succession of board.

SEC. 22. That the board of control herein provided for, shall be the legal successor of the board of control heretofore appointed and acting under the provisions of an act entitled "An act for establishing the state home and industrial school for girls," approved April 4, 1887, and shall have and exercise all the powers conferred by said act upon said board of control, save as herein by this act restricted or modified.

That during the years 1897 and 1898 and until sufficient money has been hereafter appropriated by the general assembly for the safe keeping, care, maintenance and instruction of girls committed under the provisions of this act, and the girls now in the said school, the counties from which said girls have been severally sent and committed, shall be liable for the expenses of the safe keeping, care, maintenance and instruction of such girl or girls so committed by such counties, respectively, in all respects and in like manner as heretofore provided in section 14 of said "Act establishing the state home and industrial school for girls," approved April 4, 1887.

[The act of 1887 above referred to is superseded in its entirety by the 1897 Act, found in this compilation, with its amendments, between sections 3046 and 3086.]

Legislation. Sec. 3048. Act 1897 p. 70 § 6, cited under § 3046.

3049. County committing liable for maintenance—Monthly statement rendered county.

SEC. 23. That county from which any girl committed to the state industrial school for girls shall be sent shall be liable for the expense attending the safe-keeping, care, maintenance and instruction of such girl until she shall have been finally discharged by the board of control of said school, and shall pay for the same the sum of fifty cents per day for each girl so sent until such final discharge. At its first meeting in every month the board of control of such state industrial school for girls shall, prepare and transmit to the respective boards of county commissioners of the several counties liable for such safe-keeping, care, maintenance or instruction, a certificate showing in detail the persons on whose account such expense was incurred, the amount due on account of

each such person respectively for the month preceding, and the said board of commissioners shall allow the said sum so certified against their respective counties, and shall pay the same in cash to the state industrial school for girls, the same as any other current expenses of said county.

Legislation. Sec. 3049. Act 1903 p. 250 § 1, amending Act 1899 p. 351 § 1.

3050. State treasurer ~~ex~~ officio treasurer.

SEC. 24. The state treasurer shall be ex-officio treasurer of the institution, and shall perform such duties as he is required to perform as treasurer of other state institutions in this state.

Legislation. Sec. 3050. Act 1897 p. 71 § 7, cited under § 3046.

3051. Powers of board.

SEC. 25. The members of said board of control shall constitute a body corporate under the name and style of "The Board of Control of the State Industrial School for Girls," with the right to own and hold property, real, personal and mixed; to sue and be sued; and of making and using a common seal and of altering the same at pleasure.

Legislation. Sec. 3051. Act 1897 § 8, cited under § 3046.

3052. Meetings—Quorum—President and secretary.

SEC. 26. The board of control shall meet regularly at the industrial school for girls on the first Tuesday of each month, and they may meet at such other times and at such places as they shall deem proper; *Provided*, That upon proper notice being given, such regular monthly meeting may be held in the city of Denver. A majority of the board shall constitute a quorum for the transaction of any business lawfully to be done by said board. At their regular meeting in May in each year, said board shall elect from its own body a president and secretary, who shall hold their offices for one year or until their successors shall be elected and qualified.

Legislation. Sec. 3052. Act 1907 p. 584 § 9, amending § 9 Act 1897 cited under § 3046.

3053. Board receive all persons committed.

SEC. 27. It shall be the duty of the board of control to receive, to the extent of the means placed at its disposal, and of the accommodations afforded by the buildings and grounds belonging to said school, all persons committed to its care and guardianship, under the provisions of this act; and to keep such persons during their minority, or until discharged by law, or under the rules of said board of control.

Legislation. Sec. 3053. Act 1897 p. 72 § 10, cited under § 3046.

3054. Inmates under direction of board.

SEC. 28. Each and every girl who shall be legally committed to said school, as provided in this act, shall be clothed, fed, disciplined, instructed, employed and governed under the direction of the board of control of said school, until she either be reformed and discharged according to the rules to be adopted by said board of control, or until she shall have arrived at the age of twenty-one years.

Legislation. Sec. 3054. Act 1897 § 11, cited under § 3046.

3055. Regulations established by board.

SEC. 29. The board of control shall make such regulations in regard to the food, clothing and bedding of the inmates as the health and circumstances of each may require; but all rations, clothing and bedding shall be plain and of good quality, and in sufficient quantity for the sustenance of the health and well-being of the inmates

Legislation. Sec. 3055. Act 1897 § 12, cited under § 3046.

3056. Rules for government established by board.

SEC. 30. It shall be the duty of said board of control, to prepare and adopt from time to time rules and regulations for said institution, for the government of the inmates of the same, looking to their moral, physical, intellectual, social and industrial training. Domestic industries shall take precedence of trades, and there shall be a thorough education in every branch of household work.

Legislation. Sec. 3056. Act 1897 § 13, cited under § 3046.

3057. Board inquire into treatment of inmates and general management of school—Witnesses.

SEC. 31. Said board shall, at its regular meetings, when held at the state industrial school for girls, examine all the different departments of the institution and inquire into all matters concerning them, the government, discipline, punishments and employments of the inmates, the doings and accounts of the superintendent, the money concerns, the purchases and sales, and whether the inmates are well clothed and fed and have such educational advantages as shall have been provided for; *Provided*, That when a regular or special meeting of the board shall not be held at the state industrial school during any one month, each member of the board shall be required to personally attend the said school and examine and inquire into all matters above set forth, at least once during such month. The members of the board shall also inquire into any charges made under oath against the superintendent, other officers, or employes, and for that purpose may issue subpoenas to compel the attendance of witnesses and the production of papers and writings before them, subject to the same penalties for disobedience as in cases of trials before courts of record, and may examine any witnesses brought before them, under oath, the oath to be administered by the president of the board, or by any other member, in his or her absence.

Legislation. Sec. 3057. Act 1907 p. 584 § 14, amending § 14 Act 189 cited under § 3046.

3058. Credit for good behavior.

SEC. 32. The board of control shall, under a system of marks, or otherwise, fix upon a uniform plan under which it shall determine what number of marks or credits shall be earned by each girl, sentenced under the provisions of this act, as the condition of increased privileges, or of release from its control, which system shall be subject to revision from time to time. Each girl sentenced to said school shall be credited for good personal demeanor, diligence in labor and study, and for results accomplished, and be charged for dereliction, negligence and offenses.

Legislation. Sec. 3058. Act 1897 § 15, cited under § 3046.

3059. Standing of inmates.

SEC. 33. The board of control shall establish rules and regulations by which the standing of each girl's gain of marks or credits shall be made known to her as often as once a month, and oftener if she shall at any time request it, and may make provisions by which any girl may see and converse with the said board during every meeting thereof.

Legislation. Sec. 3059. Act 1897 § 16, cited under § 3046.

3060. Release of inmate.

SEC. 34. When it appears to said board that there is a strong or reasonable probability that any girl in said school will live and remain at liberty without violating the law, and that her release is not incompatible with the welfare of society, or detrimental to her own good, then it shall issue to such girl an absolute release from confinement; *Provided*, That nothing herein contained shall be construed to impair the power of the governor to grant a pardon in any case.

Legislation. Sec. 3060. Act 1907 p. 585 § 17, amending Act 1897 § 17, cited under § 3046.

3061. Inmates may be placed in homes.

SEC. 35. It shall be lawful for said board of control to place in the care of any resident of this state, who is the head of a family and of good moral character, any of the said girls in said school, on such conditions and with such stipulations as the board may establish.

Legislation. Sec. 3061. Act 1897 p. 74 § 18, cited under § 3046.

3062. Annual report of board.

SEC. 36. The board of control shall on or before the 15th day of December in each year transmit to the governor a report made up to the close of the month of November then next preceding, showing the condition of the institution, with a detailed statement of its receipts and expenditures, estimates of expenses for buildings, repairs, machinery, and all other provisions for the

next succeeding year; the number of officers and employees, with their several salaries; the whole number of inmates in the institution and the whole number received during the year, with the names of the counties whence they came, and the causes of their commitment, the number discharged, died, escaped, paroled, or pardoned; and such other facts as may fully exhibit the entire workings of the institution during the year.

Legislation. Sec. 3062. Act 1897 § 19, cited under § 3046.

3063. Financial agent—Duties.

SEC. 37. The board of control may appoint from among its members a financial agent, who, together with the superintendent of said institution, shall have such general supervision and control as the board shall prescribe, of all purchases of supplies for manufacturing purposes at said school, and for the sale of all goods manufactured thereat, and shall perform such other duties as the board may prescribe.

Legislation. Sec. 3063. Act 1897 § 20, cited under § 3046.

3064. Debt not to be created—Expenses limited.

SEC. 38. The board of control is hereby prohibited from creating any debt against the state industrial school for girls, or in any manner incurring the same, or from incurring any expenses beyond its ability to pay from the appropriations made therefor.

Legislation. Sec. 3064. Act 1897 § 21, cited under § 3046.

3065. Superintendent—Duties.

SEC. 39. The superintendent, under the direction and management of the board, shall have general supervision of said institution.

[For appointment, salary and duties of superintendent see section 3047.]

Legislation. Sec. 3065. Act 1897 § 22, cited under § 3046.

3066. Bond of superintendent.

SEC. 40. The superintendent, before entering upon her duties

as provided in this act, shall give a bond running to the people of the state of Colorado, in the penal sum of five thousand dollars, with good and sufficient sureties to be approved by the board of control, and auditor of state, conditioned that she will faithfully discharge and perform her duties as such superintendent; that she will pay over to the state treasurer all moneys which may come into her hands belonging to said institution, as provided by law, which said bond when approved, shall be filed in the office of the secretary of state.

Legislation. Sec. 3066. Act 1897 § 23, cited under § 3046.

3067. Superintendent keep daily journal—Report to board.

SEC. 41. The superintendent shall keep a daily journal of the proceedings of the institution, in which she shall note every infraction of the rules by any officer, teacher, or employe thereof, which shall come to her knowledge, and make memorandum of every complaint made by any girl of cruel or unjust treatment from her overseer, or other officer of the institution, or the want of good and sufficient food or clothing, and also any infraction of the rules by any inmate, naming her, and specifying the offense, and also what punishment, and the extent thereof, was awarded; which journal shall be laid before the board of control at every stated meeting and at every special meeting when demanded.

Legislation. Sec. 3067. Act 1897 § 24, cited under § 3046.

3068. Superintendent account for moneys received and expended.

SEC. 42. The superintendent of the industrial school for girls shall keep or cause to be kept an accurate account of all moneys received from the sale of articles manufactured at said institution, and of the moneys expended for machinery and material, care and support of said institution, and other things connected with any other business or trade that may be deemed advisable by the board of control to be carried on at said school. She shall have charge of said business and temporary custody of the moneys so received, and at the end of every month she shall render to the state treasurer an itemized account of the moneys so received and shall pay

the same over to the state treasurer to be placed to the credit of the state home and industrial school for girls' fund, taking a duplicate receipt for the same, one copy of which she shall give to the secretary of the board of control, the other to be transmitted to the auditor of state. The money so paid to the state treasurer shall be used for the necessary expenses of said school in the same manner as a regular appropriation.

Legislation. Sec. 3068. Act 1897 § 25, cited under § 3046.

3069. Board may inspect institution.

SEC. 43. It shall be the duty of the superintendent and other officers, when requested, to admit the board of control, or either of them, into every part of said institution; to exhibit to them, or either of them, on demand, all the books, papers, accounts and writings pertaining to the institution, or to the business, government and discipline thereof, and to render them every facility to discharge their duties under this act.

Legislation. Sec. 3069. Act 1897 § 26, cited under § 3046.

3070. Register of inmates—Contents.

SEC. 44. When any girl shall be received in said school, the superintendent shall cause to be entered in a register the date of such commitment, the name, age, nativity, nationality, and such other facts as may be ascertained of parentage, early associations, influences, etc., as may seem to indicate the constitutional and acquired defects and tendencies of such girl, and base upon these an estimate of the then present condition of such girl, and the best probable plan of treatment and classification of said girl; and she shall also enter upon such register, quarterly, or oftener, minutes of the observed improvement or deterioration of character, and notations as to the methods and treatment employed; also all orders or alterations affecting the standing or situation of such girl; the circumstances, if finally released, and any subsequent facts of the personal history which may be brought to the knowledge of the superintendent.

Legislation. Sec. 3070. Act 1897 § 27, cited under § 3046.

3071. Abstract of record of each girl made to board.

SEC. 45. An abstract of the record in the case of each girl remaining under the control of the said board of control shall be made semi-annually, considered by the said board of control at a regular meeting, and be filed with the governor; each abstract shall show the date of commitment, age, the present situation, whether in school or elsewhere; whether any and how much progress has been made, and the reasons for release or continued custody, as the case may be.

Legislation. Sec. 3071. Act 1897 § 28, cited under § 3046.

3072. Parole of girl.

SEC. 46. It shall be lawful for the board of control whenever, in its discretion, it may deem any one of the girls detained in said institution to have become so far reformed as to justify it, to parole such girl, upon such conditions as to the board may seem advisable, and to return such girl to the school upon a violation of the terms of such parole.

Legislation. Sec. 3072. Act 1903 p. 248 § 1, amending § 29 Act 1897, cited under § 3046.

3073. Incurrigible girl returned to home.

SEC. 47. If any girl shall absent herself, without leave, from the person to whose care and service she has been properly committed, such girl may be forthwith returned to the said industrial school for girls without further process, and shall forfeit all credits gained by her on account of previous good conduct.

Legislation. Sec. 3073. Act 1897 § 30 p. 77, cited under § 3046.

3074. Commitments to school—Term.

SEC. 48. When any girl under the age of eighteen years and over the age of six years shall be convicted of any offense known to the laws of this state and punishable by fine or imprisonment, or both, except such as may be punishable by death or imprisonment for life, the court before whom such conviction shall be had, may, at its discretion, sentence such girl to the state industrial

school for girls, or to such punishment as is now, or may hereafter be, prescribed by law for the same offense. All commitments to the state home and industrial school for girls shall be for the term of the girl's minority, unless she shall be sooner discharged by law or the board of control, as hereinafter provided, and whenever any girl shall be discharged therefrom as reformed, or as having arrived at the age of twenty-one years, such discharge shall be a full and complete release from all penalties and disabilities which may have been created by such sentence.

[See also sections 536 and 594.]

Legislation. Sec. 3074. Act 1897 § 31 p. 77, cited under § 3046.

3075. Jurisdiction of courts—Summary proceedings.

SEC. 49. The district and county courts, and the judges thereof, in their respective counties, shall have exclusive original jurisdiction to try all cases arising under the provisions of this act. All such cases shall be summarily tried before the court, or the judge thereof, and without the intervention of a jury, unless a jury shall be demanded; except in cases of high misdemeanors or felonies, the cause shall be tried by a jury, as provided in the code of criminal procedure.

[For jurisdiction of courts see also sections 553, 562, 587 and 1590.]

Legislation. Sec. 3075. Act 1897 p. 78 § 32, cited under § 3046.

3076. Peace officers empowered to arrest girls frequenting public places.

SEC. 50. All peace officers in any city, town or county in this state are empowered to arrest all girls habitually wandering around the streets or public places, or anywhere beyond the proper control of their parents or guardian, at unseemly or improper hours. The girl so arrested shall be taken before the court or judge having jurisdiction of the person, as provided in section 32 of this act, and if it shall appear to said court or judge that the said girl is incorrigible, or is growing up in habits of vice and immorality, such girl may be committed to "The state industrial school for girls."

[Section 32 referred to is section 3075.]

Legislation. Sec. 3076. Act 1897 § 33, cited under § 3046. The involved verblage of this section would seem to deny jury trial in these cases where it is guaranteed by the Bill of Rights.

3077. Cause of commitment certified to superintendent.

SEC. 51. The court or judge by whom any person is committed to the state industrial school for girls, under the provisions of this act, shall certify to the superintendent of said school the cause of such commitment, embracing all important facts connected therewith, and the age of all persons so committed, as near as can be ascertained; the age so certified shall be held to be the correct age of such person for the purposes of this act.

Legislation. Sec. 3077. Act 1897 p. 78 § 34, cited under § 3046.

3078. Commitment to school—Return of girl to county committing.

SEC. 52. Any girl who shall be convicted of an offense punishable by imprisonment in the state industrial school for girls and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this act, and not otherwise; and the courts of this state imposing such sentence shall not fix or limit the duration thereof; the term of such imprisonment of any girl so convicted and sentenced shall be terminated by the board of control as provided in this act, or upon said girl having attained the age of twenty-one years; *Provided*, That the board of control shall have the power, and it shall be its duty, to return any girl to the authorities of the county or city from which she shall have been received, whom such board may deem to be an improper subject for its care and management, or who shall be found to be incorrigible, or whose continuance in the school the board may deem prejudicial to the management or discipline thereof, or who, in its judgment, for any other cause, should be returned from said school. In every such case it shall be the duty of said board of control to transmit to the court or judge by whom such girl was committed to the school, a statement of the reasons for such return, and it shall be the duty of the authorities of the city or county to whom such girl shall be returned, to produce said girl before the court or judge by whom she was com-

mitted, or the judge succeeding in such office, as soon as the same can reasonably be done, and such court or judge shall have power thereupon to make such order, and have such proceedings as would have been legal in the first instance and would have been made or had in case such girl had not been sent to the state industrial school for girls.

Legislation. Sec. 3078. Act 1907 p. 586 § 35, amending § 35 Act 1897,

3079. Cases instituted by indictment or information.

SEC. 53. Cases arising under this act may be instituted upon the sworn complaint of the district attorney, or his deputy, or of any credible person, or upon indictment by grand jury, or upon information by the district attorney, as is now provided by law.

Legislation. Sec. 3079. Act 1897 p. 79 § 36, cited under § 3046.

3080. Sheriff transport girl to school—Fees.

SEC. 54. It shall be the duty of the sheriff of his respective county to convey any girl committed under the provisions of this act to the school aforesaid, and he shall receive for performing such service the same fees as are allowed for similar services in criminal cases, such fees to be paid by the county from which such girl was committed.

[For fees of sheriff for transporting prisoners, see section 2532.]

Legislation. Sec. 3080. Act 1897 § 37, cited under § 3046.

3081. Girl sentenced not confined in jail—Appeal.

SEC. 55. No girl, after sentence, shall be confined in any county or city jail, but the officer to whom the writ of commitment shall be delivered shall forthwith convey such girl to the state industrial school for girls; *Provided*, Nothing in this act shall be construed to prevent any accused person from taking an appeal from the decision of any court or judge, under such forms as are now or may hereafter be prescribed by law.

Legislation. Sec. 3081. Act 1897 § 38, cited under § 3046.
Sec § 2064 as to infants under twelve.

3082. Term of commitment.

SEC. 56. All commitments to the state industrial school for girls shall be for the term of the girl's minority, which shall be until she shall have arrived at the age of twenty-one years. If, through oversight or otherwise, any person be sentenced to imprisonment in, or be committed to the state industrial school for girls for a definite period of time, said sentence, or term of commitment, shall not for that reason be void, but the sentence or commitment of such girl shall be until she is twenty-one years of age, and the girl so sentenced or committed shall be entitled to the benefits and subject to the liabilities of this act the same as if she had been so sentenced or committed until she was twenty-one years of age.

Legislation. Sec. 3082 . Act 1903 p. 248 § 2, amending Act 1897 p. 80 § 39, cited under § 3046.

3083. School shall be non-sectarian.

SEC. 57. Equal privileges shall be granted to the clergymen of all religious denominations to impart religious instruction to the inmates of said industrial school for girls and every opportunity shall be allowed such clergymen to give the inmates belonging to their respective denominations such religious and moral instruction as said clergymen may desire, and the board of control shall prescribe reasonable times and places, not inconsistent with the proper management of said school, where and when such instruction may be given, and all such instruction shall be open to all who may choose to attend.

Legislation. Sec. 3083. Act 1897 § 40, cited under § 3046.

3084. Salary of officers and employes payable monthly.

SEC. 58. The officers and employes of the industrial school for girls shall be paid such salaries monthly as shall be agreed upon between them and the board of control; said salaries to be paid upon the certificate of the board of control and the warrant of the state auditor, as provided in other cases.

Legislation. Sec. 3084. Act 1897 § 41, cited under § 3046.

3085. Vouchers for payment of supplies.

SEC. 59. All vouchers for the purchase of supplies or other indebtedness of the industrial school for girls, shall be signed by the president and secretary of the board of control, and certified by the superintendent, and upon presentation of the same to the auditor of state, he shall draw his warrant upon the state treasurer in favor of the claimant, out of any moneys appropriated for the care and support of the state industrial school for girls.

Legislation. Sec. 3085. Act 1897 § 42, cited under § 3046.

3086. Penalty for aiding escape or harboring escaped girl.

SEC. 60. Every person who shall encourage, aid, abet or assist any girl in escaping from the state industrial school for girls, or shall aid, abet, encourage or assist any girl to go from, or to remain away from any person to whom she has been paroled, or to whose care and service she has been properly committed, or shall knowingly harbor any girl who has escaped from the said school, or has violated the terms of her parole, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail for not more than one year, or by fine not to exceed one thousand (1,000) dollars, or both such fine and imprisonment, in the discretion of the court.

Legislation. Sec. 3086. Act 1903 p. 249 § 3, amending Act 1897 § 43, cited under § 3046.

The amendment enlarged the scope of the offense but cut down the punishment and makes it misdemeanor instead of felony.

Upon conviction under the delinquent children acts a girl or boy may in a proper case be committed to the Industrial School. § 594.

CHAPTER LXX.

INSURANCE.

- I. GENERAL INSURANCE LAWS.—3087-3121.
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3087. Definitions.

SECTION 1. That in this act, unless the context otherwise requires: "Company" or "insurance company" shall include all corporations, associations, partnerships or individuals engaged as principals in the insurance business, excepting fraternal and benevolent orders and societies. "Domestic" designates such companies when incorporated under the laws of the state of Colorado. "Foreign," when used without limitations, designates such companies when organized or incorporated under authority other than that of the state of Colorado.

The word "Commissioner" and the words "Deputy commissioner" as used in this act, shall designate the commissioner of insurance and the deputy commissioner of insurance, respectively. Wherever in the laws of Colorado which are not repealed by this act other titles are used to designate the chief officer and the second officer of the insurance department, such titles shall be understood as meaning the commissioner of insurance and the deputy commissioner of insurance, as hereinafter defined by this act.

Legislation. Sec. 3087. Act 1907 p. 431 § 1, entitled:

AN ACT

Relating to An Insurance Department in and for the State of Colorado, and to Regulate the Insurance Companies and Fraternal and Benevolent Orders and Societies and Others Doing Business Therein, Providing Penalties for Violations Thereof, and Repealing All Acts and Parts of Acts in Conflict Therewith.

3088. Creating department.

SEC. 2. That the insurance department of the state of Colorado is hereby reorganized and reestablished as hereinafter provided as a separate and distinct department charged with the execution of all laws in relation to insurance companies doing business in this state.

Legislation. Sec. 3088. Act 1907 § 2, cited under § 3087.

3089. Providing a commissioner.

SEC. 3. Upon the approval of this act the governor shall by and with the consent of the senate, appoint a commissioner of insurance, who shall be the chief officer of the insurance department, whose term of office shall expire upon the last day of January, A. D. 1909; and then and thereafter the governor shall appoint the commissioner of insurance, whose term of office shall be two (2) years, commencing always with the first day of February. The commissioner shall be an elector of the state of Colorado, and actually experienced in the insurance business and his salary shall be and is hereby fixed at three thousand (3,000) dollars per annum. The governor shall have the power, and it is hereby made his duty to remove the said commissioner for neglect of duty, breach of trust, incompetence, or malfeasance in office, upon reasonable cause shown; and in case of such removal, the governor shall file in the office of the secretary of state, and report to the next session of the general assembly, the reason for such removal.

Legislation. Sec. 3089. Act 1907 § 3, cited under § 3087.

3090. Deputy commissioner.

SEC. 4. Upon his appointment the commissioner of insurance shall appoint a deputy commissioner of insurance, whose term of office shall expire upon the last of January, A. D. 1909, and then and thereafter the commissioner shall appoint a deputy commissioner, whose term of office shall be four years, commencing always with the first day of February. The said deputy shall be an elector of the state of Colorado, and shall be well versed in matters relating to insurance, and shall in addition to his duties as deputy

perform the duties of chief clerk and cashier of the department. The appointment of said deputy shall be evidenced by a certificate under the seal of the commissioner, and said deputy shall possess all the powers and perform all the duties attached by law to the office of commissioner, during a vacancy and during the absence or inability of his principal. Said deputy shall receive a salary of twenty-one hundred (2,100) dollars per annum. It shall be the duty of the commissioner to remove the deputy commissioner for neglect of duty, breach of trust, incompetence or malfeasance in office, upon reasonable cause shown.

Legislation. Sec. 3090. Act 1907 § 4, cited under § 3087.

3091. Actuary.

SEC. 5. The commissioner of insurance shall employ and always maintain in the department an actuary who shall be experienced and skilled and fully competent to perform the actuarial duties of the department, and to assist in or take charge of examinations of insurance companies under the general direction of the commissioner or his deputy. The actuary shall receive a salary of twenty-four hundred (2,400) dollars per annum, and may be removed by the commissioner:

Legislation. Sec. 3091. Act 1907 § 5, cited under § 3087.

3092. Personal fees prohibited.

SEC. 6. Neither the commissioner, the deputy, the actuary nor any employe of the department shall be directly or indirectly employed by any insurance company, association or society doing business in this state, in any capacity, or be directly or indirectly interested in any such insurance corporation, except as a policyholder; nor shall they or any of them charge any such insurance corporation or official any fee or take any valuable thing in payment for any service whatsoever, unless payment for such service is specifically authorized by law. The penalty for violation of this section shall be removal from office.

Legislation. Sec. 3092. Act 1907 § 6, cited under § 3087.

3093. Required to give bond.

SEC. 7. The commissioner, the deputy and the actuary shall, before entering upon their duties, take and subscribe to the oath required by the constitution of Colorado, and shall give bonds to the state of Colorado as follows: The commissioner in the sum of thirty thousand (30,000) dollars; the deputy commissioner in the sum of twenty thousand (20,000) dollars; and the actuary in the sum of fifteen thousand (15,000) dollars, to be approved by the governor and attorney general, conditioned for the faithful and impartial discharge of their duties which oath and bond each shall file in the office of the secretary of state.

[The oath above referred to is the oath prescribed by Constitution, article 12, section 8.]

Legislation. Sec. 3093. Act 1907 § 7, cited under § 3087.

3094. Official seal.

SEC. 8. The seal of the commissioner of insurance shall be of such device as the governor and commissioner may prescribe, to be surrounded by the words, "Commissioner of Insurance for Colorado," an impression of which shall be filed in the office of the secretary of state. Every certificate or other paper executed by said commissioner in pursuance of any authority conferred on him by law, and sealed with his seal of office, and all copies of papers certified by said commissioner and authenticated by said seal, shall in all cases be evidenced, equally and in like manner as the original thereof, and shall have the same force and effect as the originals would in any suit or proceeding in any court of this state.

Legislation. Sec. 3094. Act 1907 § 8, cited under § 3087.

3095. Office—Employ examiners.

SEC. 9. The said commissioner shall have an office at the state capitol, and shall procure necessary furniture, safe, stationery, printing and such other appliances as may be necessary for the transaction of the business of his office, and may employ persons to make personal examinations of the condition and affairs of insurance companies when necessary as required by law; and

whenever he may think necessary he shall call upon the attorney general of the state for legal counsel and such assistance as may be necessary to enforce the provisions of this act.

Legislation. Sec. 3095. Act 1907 § 9, cited under § 3087.

3096. Public records.

SEC. 10. The office of said commissioner of insurance shall be deemed a public office, and the records, books and papers thereof or on file therein shall be deemed public records of the state. All books and documents and all other papers whatever in the office of any of the officers of the state, relating to insurance, shall, on demand, be delivered and transferred to the commissioner of insurance, who shall give a receipt for the same, which shall be a full release from all responsibility in connection with such documents, books and papers.

Legislation. Sec. 3096. Act 1907 § 10, cited under § 3087.

3097. Duties of commissioner.

SEC. 11. It shall be the duty of the commissioner to file in his office and safely keep all books and papers required by law to be filed therein, and to keep and preserve in permanent form a full record of his proceedings, including a concise statement of the condition of such insurance companies reported and examined by him, to issue certificates of authority to transact insurance business to any insurance companies which have fully complied with the laws of this state, and to issue such other certificates as required by law in the organization of insurance companies and the transaction of the business of insurance, and generally to do and perform with justice and impartiality all such duties as are or may be imposed on him by the laws in relation to the business of insurance in this state. He shall, annually, at the earliest practical date, after the returns are received from the several companies, make a report to the governor of the affairs of the insurance department, which report shall contain a tabular statement and synopsis of the several statements as accepted by the commissioner, and such other matters as in his opinion may be of benefit to the public, and shall make such recommendations as he may deem

proper in regard to the subject of insurance in this state, and shall set forth in a statement, verified by oath and the certificate of the auditor of state, the various sums received and disbursed by him, from and to whom, and for what purpose. Not exceeding 1,000 copies of such report shall be published by and subject to the order of the said commissioner at the expense of the department. The commissioner shall, within ninety (90) days after entering upon the discharge of the duties of the office, furnish to all insurance companies doing business in this state a copy of this act, and shall annually, in November, furnish such companies blanks for the filing of statements as required by law. The commissioner, on retiring from office, shall deliver to his qualified successor all furniture, papers, and property pertaining to his office.

[For supervision of commissioners over Title and Guaranty Company see section 939.]

Legislation. Sec. 3097. Act 1907 § 11, cited under § 3087.

3098. Deposits with departments.

SEC. 12. The commissioner shall receive and hold on deposit, in the manner provided in this act, the securities of domestic companies which are deposited by any such company under the provisions of this act for the purpose of securing policyholders, or to comply with any similar law of another state to enable such company to transact business in such state. The commissioner shall furnish under his hand and official seal to such company, a certificate certifying that he holds said securities in trust for the benefit of the policyholders of such company.

Legislation. Sec. 3098. Act 1907 § 12, cited under § 3087.

3099. How deposits are made—Penalty.

SEC. 13. The commissioner of insurance shall give vouchers for all securities deposited with him to the company depositing them. It shall be the duty of the commissioner, upon the receipt of such securities from any insurance company, to forthwith deposit the same in the presence of the president or authorized agent of the company, in a strong iron box which shall require two dis-

tinct and different keys to unlock the same; one key to be kept by the commissioner and the other by the company; and the box shall not be opened except in the presence of the commissioner or deputy and the said president or authorized agent of the company; *Provided, however,* That in case the company having such securities on deposit shall be adjudged insolvent, or be dissolved, the court may make and enforce the necessary orders to place such securities or any part of them at the sole disposal of the court or the commissioner. The boxes shall be placed in the vault of a safe deposit company or national bank in the city of Denver, to be selected by the commissioner, and the insurance companies shall pay the several fees for the safe keeping of their several boxes. So long as the company so depositing shall continue solvent, the commissioner shall permit such company to collect and receive the interest and dividends on its securities so deposited and transferred, and from time to time to withdraw any such securities on depositing other securities in the stead of those to be withdrawn, such new securities to be of the same value as those withdrawn.

If the commissioner or his deputy shall wilfully fail, refuse or neglect to faithfully keep, deposit, account for or surrender, in the manner by law authorized or required, any such securities as aforesaid transferred to and received by him or under his custody under the provisions of this act, or shall wilfully fail, refuse or neglect to furnish proper certificates of the securities so held by him as herein provided, said commissioner or his deputy shall be responsible upon his official bond and suit may be brought upon said bond by any person injured.

Legislation. Sec. 3099. Act 1907 § 13, cited under § 3087.

3100. Examinations and investigations.

SEC. 14. The commissioner of insurance shall examine and inquire into violations of the insurance laws of this state and for this purpose, or to see if the laws are obeyed, or to examine the financial condition, affairs and management of any company, he may visit, or cause to be visited by any competent person or persons he may appoint, the head office in the United States of any domestic or foreign insurance company applying for admission to,

or already admitted to do business in this state, and may for these purposes examine or investigate any company organized under the laws of Colorado, and any agency of any company doing business in this state; *Provided*, That the consent of the governor must be obtained to all examinations, inquiries or investigations, the cost of which to the state or the insurance company is to exceed one thousand (1,000) dollars. The cost of such examinations when made beyond the borders of the state of Colorado shall be paid by the company examined, and shall include the reasonable expenses of the commissioner, his deputies and assistants employed therein, whose services are paid for by the department, and the compensation and reasonable expenses of his assistants employed therein whose services are not paid for by the department. Duplicate receipts showing the entire cost of the examination authorized by the commissioner shall be taken and certified to by the company examined, and one shall be filed with the governor, and the other shall be filed in and become a part of the public record of the insurance department. When insurance companies not admitted to do business in this state, or companies adjudged insolvent, or companies for any cause withdrawing from the state, neglect, fail or refuse to pay the charges for examination as approved by the commissioner, such charges shall be paid by the state treasurer from the insurance fund upon the order of the commissioner, and the amount so paid shall be a first lien upon all the assets and property of such company, and may be recovered by suit by the attorney general on behalf of the state of Colorado, and restored to the insurance fund. The commissioner may also examine companies upon the request of five or more of the policyholders, representing at least \$100,000 insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing, that such company is in an unsound or insolvent condition; *Provided*, That only the United States branches of companies incorporated in foreign countries shall be examined by said commissioner. For the purposes of the examinations, inquiries or investigations as aforesaid, the commissioner or his deputy, or the person authorized to make them, shall have free access to all books and papers of an insurance company that relate to its business, and the books and papers

kept by any officer, agent or employe relating to, or upon which any record of, its business is kept, and may summon witnesses and administer oaths or affirmations, in the examination of the directors, trustees, officers, agents or employes of any such company, and any other person in relation to its affairs, transactions and conditions. He may require and compel the production of records, books, papers, contracts or other documents by attachment, if necessary. Any person knowingly or wilfully testifying falsely in reference to any matter material to said investigation, examination or inquiry, shall be deemed guilty of perjury, and punished accordingly; and any person who shall wilfully refuse or fail to attend, answer or produce books or papers, or who shall refuse to give said commissioner or the person authorized by him, full and truthful information and answer in writing to any inquiry or question made in writing by said commissioner or the person authorized by him, in regard to the business of insurance carried on by such person, or other matters under investigation, or refuse or wilfully fail to appear and testify under oath before the commissioner or the person authorized by him, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred (500) dollars or imprisonment in the county jail not exceeding three (3) months, or by both such fine and imprisonment. Any director, trustee, officer, agent or employe of an insurance company, or any other person, who shall knowingly or wilfully make any false certificate, entry or memorandum upon any of the books or the papers of any insurance company, or upon any statement filed or offered to be filed in the insurance department of this state, or used in the course of any examination, inquiry or investigation, with the intent to deceive the commissioner or any person employed or appointed by him to make such examination, inquiry or investigation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one thousand (1,000) dollars, or by imprisonment for not less than two (2) months nor more than twelve (12) months in the county jail, or by both such fine and imprisonment.

[Penalty for perjury. Section 1716.]

Legislation. Sec. 3100. Act 1907 § 14, cited under § 3087.

CITATIONS.

Powers of superintendent of insurance over the affairs of mutual companies under the act of 1883.—*Spruance v. Farmers' & M. Ins. Co.*, 9 C. 73, 79, 10 P. 285.

The superintendent, under act of 1883, having no power to act outside of state, had no power to disburse public money while visiting other states.—*Carlile v. Hurd*, 3 A. 12, 31 P. 952.

3101. Publishing result of examinations—Revocation of license.

SEC. 15. When the commissioner of insurance deems it to the interest of the public, he may publish the result of any examination or investigation in a daily newspaper published in Denver and of general circulation in the state. If the commissioner finds upon examination, hearing or other evidence, that any foreign or domestic insurance company is in an unsound condition, or has failed to comply with the law or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public or to its policyholders, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination or to perform any legal obligation relative thereto, or refuse on behalf of the company to pay the examination charges, he shall suspend or revoke all certificates of authority granted to said insurance company, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers published in Denver, which shall have a general state circulation, and no new business shall thereafter be done by it or its agents in this state, while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any such company, the commissioner shall, unless it is insolvent or its capital impaired, grant it fifteen days in which to show cause why such action should not be taken.

Any foreign or domestic insurance company whose certificate of authority has been suspended or revoked by the commissioner, may, within fifteen days thereafter, appeal from said order to the district court, which court, upon the filing of the proper petition,

shall cause the record and orders of the commissioner to be brought before it, and upon a hearing of the case by the court de novo, the court shall either confirm or revoke the order of the commissioner as the law and fact of the case may warrant.

Said court shall have the power to make an order suspending or staying the order of said commissioner suspending or revoking the license of a domestic company pending the appeal; *Provided*, The company appealing, shall give a bond, with sureties satisfactory to the court, in such penalty as the court may determine to be just and proper, conditioned to pay to the state and to any and all persons whomsoever any and all loss that may be sustained by reason of the stay or suspension of such order of said commissioner; *And, provided, further*, That during the period allowed for taking such appeal, the publication of notice of the revocation or suspension of license of such domestic company as provided by this act, shall not be made, and if the order of said commissioner has been stayed or suspended by the order of said court, such publication shall not be made until after the discharge of such stay or until the affirmance of such order of revocation or suspension. Upon such appeal the domestic insurance company shall be entitled to a trial by jury upon all issues of fact. If the trial is by jury, the court shall submit to the jury specific requests to find, covering the matters in issue separately, and the jury shall return a special verdict upon each question submitted, and if by such verdict it shall be found that the corporation, association or society is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets as herein provided or its capital has been impaired, the court may render judgment that it and each officer thereof be perpetually enjoined from exercising any corporate rights, privileges or franchises, and that it be dissolved and that a receiver be appointed, an account taken, and an equitable distribution of its property among its creditors and members be made. If no charge of insolvency is made, or, if made, is not established by the verdict of the jury, but it shall be found by such verdict that the corporation, association or society has exceeded its corporate powers or failed to comply with any provisions of this act or has done or committed any act for which its license may be revoked or suspended under any of the provisions of this act or

has conducted its business unlawfully or fraudulently, the court may make and enter judgment enjoining and restraining it from the commission of such acts or such of them as the court may determine, and in case of failure to desist therefrom within the time to be specified in such judgment, that the corporation be dissolved. Pending the trial if no bond has been given as herein provided, the court may, upon motion of the attorney general and upon notice to the corporation, association or society, grant an injunction restraining it and its directors and other officers from collecting any debt or demand and from paying out or in any way transferring or delivering to any person any money, property or effects during the pendency of the proceedings except by direction of the court, and may appoint one or more temporary receivers in such cases. From the action of said district court an appeal may be taken by either the commissioner of insurance or by the insurance company to the supreme court of the state as in other cases; and it shall be the duty of said district court and of said supreme court to advance the hearing of said matter as far as justice and the business of the court may permit.

[For appeals to supreme court, see Code, Chapter 38.]

Legislation. Sec. 3101. Act 1907 § 15, cited under § 3087.

3102. Fees paid by insurance companies.

SEC. 16. There shall be paid by every insurance company doing business in this state, to the commissioner of insurance, the following fees, viz:—

For filing the certified copy of articles of incorporation, required by this act on the organization of each company, \$50;

For filing power of attorney and statement preliminary to admission, \$50;

For filing copy of its charter or deed of settlement, and examination thereof, \$25;

For filing annual statement, \$50;

For certificate of authority to transact business in this state, \$5;

For each copy of certificate of authority for use of agents and solicitors, \$2;

For each copy of any paper filed in his office, per folio, 20 cents;

For affixing the seal of his office and certifying any paper, \$1.

All insurance companies engaged in the transaction of the business of insurance in this state, shall annually, on or before the first day of March, in each year, pay to the commissioner of insurance two (2) per cent. on the gross amount of premiums received within this state during the year ending the previous 31st day of December. Insurance companies shall not be subject to any further taxation except on real estate, and the fees provided by this act.

[For fees to be paid commissioner by county mutual protective associations, see section 3157.]

[For fees paid by fraternal and benevolent organizations, see section 3160.]

Legislation. Sec. 3102. Act 1907 § 16, cited under § 3087.

3103. Collections of insurance department—Expenses.

Sec. 17. All moneys received by the commissioner of insurance shall be paid in to the state treasury, for an insurance fund, within thirty (30) days after the receipt of the same, and shall be used for the purpose of defraying the expenses of the insurance department. The state treasurer shall give duplicate receipts for all moneys thus paid into the state treasury, one of which shall be delivered to the auditor of state, and the other filed in the office of the commissioner of insurance. All expenses of the insurance department, including salaries, shall be paid by the state treasurer out of moneys in his hands, to be known as the insurance fund, on warrants drawn on such fund by the commissioner and approved by the governor; but no money shall be paid out of the state treasury in excess of the amount collected from insurance companies, as provided in this act. For all the payments made by him, the commissioner shall take proper vouchers. The accounts for all receipts and disbursements made by the insurance department, shall be audited, adjusted, and a report made thereon to the governor at the close of each year by the auditor of state.

Legislation. Sec. 3103. Act 1907 § 17, cited under § 3087.

3104. Duty of state treasurer.

SEC. 18. The treasurer of the state of Colorado shall from time to time transfer from the insurance fund to the general fund such part thereof as shall be in excess of that required for the expenses of the insurance department. All moneys thus transferred to the general fund to be thereupon and immediately used for the redemption of outstanding warrants and such other purposes as such general fund is applied.

Legislation. Sec. 3104. Act 1907 § 18, cited under § 3087.

3105. Names of companies.

SEC. 19. No domestic insurance company shall adopt the name of any existing company transacting a similar business, or any name so similar as to be calculated to mislead the public, but any domestic mutual or mutual assessment insurance company may, upon complying with the terms and conditions of this act, be reorganized and reincorporated as a joint stock company under the same name by which it was incorporated as a mutual or assessment company, with the omission of the word "Mutual;" and it shall be unlawful for any other company to be incorporated or transact business under or by the name under which any such mutual or mutual assessment company was operating at the time of reincorporation.

Legislation. Sec. 3105. Act 1907 § 19, cited under § 3087.

3106. Soliciting for unauthorized companies prohibited.

SEC. 20. It shall be unlawful for any person, company or corporation in this state, either to procure, receive or forward applications for insurance in or to issue or to deliver policies for any company or companies not having been legally authorized to do business in this state, as provided in this act; and any persons violating the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall, for each and every offense, be punished by a fine of one hundred (100) dollars or imprisonment for two months in the county jail, or both, in the discretion of the court.

Legislation. Sec. 3106. Act 1907 § 20, cited under § 3087.

3107. Authority to do business—Agents and brokers.

SEC. 21. (1) No foreign or domestic insurance company shall transact any insurance business in this state, unless it shall first procure from the commissioner of insurance a certificate of authority stating that the requirements of the laws of this state have been complied with, and authorizing it to do business. Said certificate of authority shall expire on the last day of February in each year, and shall be renewed annually if the company has continued to comply with the laws of the state.

(2) Every such company shall, through its proper officer or agent, promptly notify the commissioner in writing of the name, title and address of each person it appoints or employs to act as agent or solicitor in this state. Upon receipt of this notice, together with the fee required by this act, if such person is of good reputation and character and the facts warrant it, the commissioner shall issue to such person a certificate, which shall include the name of the company requesting it, a copy of the certificate of authority authorizing it to do business in this state, and the name and title of the person to whom the certificate is issued. Such certificate, unless revoked by the commissioner for cause, or cancelled at the request of the company employing the holder thereof, shall continue in force until the first day of March, next after its issue, and must be renewed annually.

(3) The commissioner of insurance may upon the payment of ten (10) dollars issue to any suitable person, resident in this state, a license to act as insurance broker to negotiate contracts of insurance or reinsurance, or place risks or effect insurance or reinsurance with any qualified insurance company authorized to do business in this state. A broker's license shall expire on the last day of February, unless revoked by the commissioner for cause, and must be renewed annually. Cause for the revocation of the license of a broker or the certificate of an agent or solicitor may exist for violation of the insurance laws, or if it shall appear to the commissioner upon due proof after notice, that such broker, agent or solicitor, has knowingly deceived or defrauded a policyholder or person being solicited for insurance, or that such broker, agent or solicitor has unreasonably failed and neglected to pay

over to the company or its agent entitled thereto any premium or part thereof collected by him on any policy of insurance. The commissioner shall publish such revocation in such manner as he deems proper for the protection of the public.

(4) Whoever, for compensation, not being the appointed officer, agent or solicitor of the company in which insurance or reinsurance is effected, acts or aids in any manner in negotiating any contract of insurance or reinsurance for a person other than himself, shall be an insurance broker, and no person shall act as such broker unless licensed by the commissioner as herein provided.

(5) A person who is neither a licensed broker nor provided with a certificate from the insurance department as an authorized agent or solicitor of an insurance company, and who for compensation solicits insurance in behalf of such company, or transmits for a person other than himself an application for a policy of insurance to or from such a company, or offers or assumes to act in the negotiation of such insurance, shall be an insurance agent or solicitor within the intent and for the purposes of this act, and shall therefor, except as otherwise provided in sub-division six (6) of this section, become liable for all duties, requirements, liabilities and penalties to which an agent of such company is subject; and such company by compensating such person, through any of its officers, agents, or solicitors, for soliciting, shall thereby accept and acknowledge such person as its agent or solicitor in such transaction.

(6) The certificate issued by the commissioner to the agent or solicitor, and the license issued to the broker are strictly personal. They do not extend to the employes of an agent, solicitor or broker. Such employes can not do acts forbidden to persons not provided with such certificate or license, except when in the presence of and under the immediate personal direction of the licensed employer, or incidental to the work as clerk. An agent or solicitor must have a certificate from the commissioner of insurance for each company for which business is solicited; *Provided*, That an agent's personal solicitor attached to his office shall be required to have but one certificate, which shall be issued by the commissioner to the agent for the use of such solicitor;

And, provided further, That a duly licensed agent placing a risk or policy which his company or companies for any reason can not accept, in another company doing the same kind of insurance business, shall not for such transaction be required to have an agent's or solicitor's certificate for such other company. When an application is received for a certificate of authority for an agent or solicitor for a life insurance company for a person already authorized by the commissioner of insurance to act for another insurance company, it shall be the duty of the commissioner to notify the company for which such person is already authorized to act of such application and to also notify the company by or for which the application is made of the name of the company for which such person is already authorized to act as agent or solicitor.

(7) It shall be the duty of every person soliciting insurance in this state, to comply with the provisions of this act relating to the procurement of certificates and licenses; and any person who solicits insurance without the certificate of authority of an agent or solicitor for the company receiving the business, or the license of a broker, as required by this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred (100) dollars or by imprisonment in the county jail of not exceeding two months, or both such fine and imprisonment, in the discretion of the court.

(8) When any agent or solicitor of any insurance company doing business in this state accepts an application for insurance from any person not provided with the certificate for an agent or solicitor, or the license for a broker as required herein, and in any way compensates or promises to compensate such person for soliciting such application, the commissioner of insurance shall, upon due proof and notice, suspend or revoke the certificate of such agent or solicitor; and if it shall appear to the commissioner that the company for which such agent or solicitor is acting is guilty of participation in the acts of such agent or solicitor, the commissioner shall suspend the certificate of authority of such company to do business in this state, for a period of not less than one nor more than three months for each and every offense.

(9) Any person who shall solicit and procure an application for insurance, shall, in any controversy between the parties to the

contract, or between the parties to the contract and the beneficiary, if any, be held to be the company's agent, whatever conditions or stipulations may be contained in the policy or contract. Such agent or broker who knowingly procures by fraudulent representations payment or an obligation for payment of a premium of insurance, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred (100) dollars or more than one thousand (1,000) dollars, or by imprisonment in the county jail for not more than one year, but such policy may provide that no statement or declaration made to or by any agent, examiner or other person, not contained in the application, shall be taken or considered as having been made to or brought to the notice or knowledge of the company, or as charging it with any liability by reason thereof.

(10) An insurance agent or broker who acts in negotiating a contract of insurance, or who collects premiums for an insurance company lawfully doing business in this state, and who embezzles or fraudulently converts to his own use, or with intent to use or embezzle, takes, secretes or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitute for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be guilty of larceny and be punished accordingly.

(11) Any solicitor, agent or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation in, or with reference to, any application for insurance, or for the purpose of obtaining any money or benefit in any corporation transacting business under this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court.
[Punishment for larceny. Section 1678.]

Legislation. Sec. 3107. Act 1907 § 21, cited under § 3087.

CITATIONS.

In an action against an insurance company for commissions held under the facts that the failure to file the certificate of ap-

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pointment was immaterial.—*Penn. Mutual Ins. Co. v. Orner*, 39 C. 498, 90 P. 846.

A professional adjuster of insurance is not an insurance agent and he has a right to follow his business in any state. Any law abridging the right would be void.—*French v. Peo.*, 6 A. 312, 40 P. 463.

Company not permitted to deny the appointment of sub-agents designated by statement filed by general agent.—*Mutual Life Ins. Co. v. Lewis*, 13 A. 528, 58 P. 787.

This section, as to certificates of authority, cited in an action by a company upon its agent's bond.—*Thompson v. Commercial U. A. Co.*, 20 A. 334 78 P. 1074.

3108. Agents of foreign insurance companies shall file notice.

SEC. 22. All agents of foreign insurance companies shall, upon their acceptance of such agencies, signify the same in writing, to the clerk of their respective counties; which notice shall be filed by the clerk in his office; which shall entitle the agent to grant policies of insurance, according to the laws governing the company of such agency.

Legislation. Sec. 3108. Act of 1861 p. 71 § 16. R. S. p. 426 § 16. G. L. § 1633. G. S. § 2111.

3109. Appointing commissioner—Attorney.

SEC. 23. No foreign insurance company shall, directly or indirectly, issue policies, take risks or transact business in this state, until it shall have first appointed, in writing, the commissioner of insurance to be the true and lawful attorney of such company in and for this state, upon whom all lawful processes in any action or proceeding against the company may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree, upon the part of the company, that any lawful process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding against the com-

pany in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by him shall be deemed sufficient evidence, and service upon such attorney shall be deemed sufficient service upon the principal.

Whenever lawful process against any insurance company shall be served upon the commissioner, he shall forthwith forward a copy of the process served on him, by mail, post-paid, and directed to the secretary of the company; or, in case of companies of foreign countries, to the resident manager in this country; and shall also forward a copy thereof to the general agent of said company in this state. For each copy of process the commissioner shall collect the sum of two (2) dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him, as part of the taxable costs, if he prevails in the suit.

Legislation. Sec. 3109. Act 1907 p. 448 § 22, cited under § 3087.

3110. File duly certified copy of charter—Fees.

SEC. 24. No foreign insurance company shall transact any business in this state, unless it shall first file in the office of the commissioner of insurance a duly certified copy of its charter, or articles of incorporation, or deed of settlement, together with a statement, under oath, of the president and secretary, or other chief officers of such company, showing the condition of affairs of such company on the 31st day of December next preceding the date of such oath. The statement shall be in the same form and shall set forth the same particulars as the annual statement required by this chapter; *Provided, further,* That all foreign insurance companies hereafter applying for authority to do business in this state, shall, for filing the articles required by this section, pay to the commissioner the same fee as that required by the statutes for filing the same document or documents with the secretary of state; but in no case shall the fee paid to the commissioner be less than twenty-five (25) dollars.

Legislation. Sec. 3110. Act 1907 § 23, cited under § 3087.

3111. Insurance company reports and statements—Publications.

SEC. 25. Every insurance company doing business in this state shall, on or before the first day of March in each year, render to the commissioner of insurance a report, signed and sworn to by its chief officers, of its condition on the preceding thirty-first day of December, which shall include a detailed statement of assets and liabilities, the amount and character of its business transacted, and moneys received and expended during the year, and any further details of expenditures, and such other information, to be included in the report or supplementary thereto, which the commissioner may deem necessary. A synopsis of such statement, together with the commissioner's certificate of authority to transact business in this state, shall be published in some newspaper of general circulation, published at the capital, for at least four insertions. Such publication shall be made within thirty days after such certificate of authority is issued, and a copy of the paper containing such publication shall be filed in the office of the commissioner. The commissioner shall revoke and refuse to reissue the certificate of authority of any insurance company failing or refusing to furnish the reports or other information requested by the commissioner as provided in this section.

Legislation. Sec. 3111. Act 1907 § 24, cited under § 3087.

3112. Cash capital—Deposit.

SEC. 26. No joint stock fire or life insurance company shall be permitted to do any business in this state, unless it is possessed of an actual paid up cash capital, as follows: Fire insurance companies with territory not limited to Colorado, of not less than two hundred thousand (200,000) dollars; fire insurance companies, the business of which is limited to Colorado only, not less than fifty thousand (50,000) dollars; and life insurance companies not less than one hundred thousand (100,000) dollars. No joint stock insurance company organized for any other purpose than fire or life insurance, shall be permitted to do any business in this state, unless possessed of an actual paid up cash capital of not less than one hundred thousand (100,000) dollars. No domestic mutual life

insurance company shall be permitted to do business in this state unless it is possessed of an actual paid up cash guaranty fund of not less than one hundred thousand (100,000) dollars, and no such foreign company shall be permitted to do business in this state unless it is possessed of a guaranty capital, or equivalent fund or surplus over all liabilities for the protection of policy holders, amounting to not less than one hundred thousand (100,000) dollars. The cash or securities representing the minimum capital or guaranty fund required by this act of domestic joint stock companies and of domestic companies incorporated on the mutual and mutual assessment plans, shall be deposited with the commissioner of insurance in the manner provided in this act. Domestic joint stock fire insurance companies organized to operate with territory limited to Colorado, may incorporate under this section, with a capital of not less than \$200,000—fifty thousand dollars of which must be actually paid in before it can be authorized to transact business; and when the full amount of the authorized capital is actually paid in, and all of the requirements of this act complied with, such company may be authorized to do business beyond the limits of Colorado; *Provided*, That companies so organized shall in all printed or advertising matter wherein the authorized capital is stated, also state the portion of the capital actually paid up.

No life or fire insurance company not organized under the laws of a state, territory or district of the United States, shall be admitted or permitted to do any business in this state, until, besides complying with the insurance laws of this state, it has made a deposit with the commissioner of insurance of this state, or with the duly authorized officer of some other state of the United States, of a sum not less than the capital required of like companies under this act. Such deposit must be an exclusive trust for the benefit and security of all of the company's policy holders and creditors in the United States, and may be made in the securities, but subject to the limitations specified in section 26 of this act; and such deposit shall be deemed for all purposes of the insurance laws, the capital of the company making it.

[Section 26 referred to is section 3113.]

Legislation. Sec. 3112. Act 1907 § 25, cited under § 3087.

CITATIONS.

The requirements of this section referred to as not applying to mutual companies.—*Spruance v. Farmers' & M. Ins. Co.*, 9 C. 76, 10 P. 285.

3113. Investments of companies.

SEC. 27. It shall be lawful for any domestic insurance company to invest its capital and funds accumulated in the course of its business, or any part thereof, in loans on the security of its own policies not exceeding the reserve thereon, in bonds and mortgages on real estate worth fifty per cent. more than the sum loaned thereon, over and above all incumbrances, exclusive of buildings, unless such buildings are insured and the policy transferred to said company; and also in the bonds of this state, or bonds or treasury notes of the United States; and also in the bonds of any school district or incorporated city in this state, authorized to be issued by the legislature; and to lend the same, or any part thereof, on the security of such bonds, or treasury notes, or upon bonds or mortgages as aforesaid, and to change and reinvest the same as occasion may from time to time require; but any surplus money over and above the capital stock of any such insurance company may be invested in or loaned upon the pledge of the public bonds of the United States or any one of the states, on the bonds or other evidences of indebtedness of any solvent dividend-paying institutions, other than mining corporations, incorporated under the laws of any state or of the United States; *Provided, always*, That the current market value of such bonds or other evidences of indebtedness shall be at all times, during the continuance of such loans, at least twenty per cent. more than the sum loaned thereon.

Legislation. Sec. 3113. Act 1907 § 26, cited under § 3087.

CITATIONS.

This section cited as to the data which the superintendent could consider in passing upon the financial condition of a mutual company.—*Spruance v. Farmers' & M. Ins. Co.*, 9 C. 80, 10 P. 285.

3114. No dividend except from surplus profits.

SEC. 28. It shall not be lawful for the directors, trustees, managers or officers of any insurance company, organized under any of the laws of this state, directly or indirectly, to make or pay any dividend or pay any interest, bonus or other allowance in lieu of dividends, except from surplus profits arising from their business. Except as otherwise provided herein, in the case of life insurance companies, every insurance company doing business in this state and issuing policies or certificates in which policyholders or members are entitled to share in any part of the profits or surplus, shall make an annual apportionment and accounting of divisible surplus to each such policyholder or member on all such participating policies and shall carry the amount of such apportioned surplus as a distinct and separate liability, and no company, or any of its officers, shall be permitted to use any part of such apportioned surplus fund for any purpose whatsoever, other than for the express purpose for which same was accumulated.

Legislation. Sec. 3114. Act 1907 § 27, cited under § 3087.

3115. Not authorized in other states.

SEC. 29. If upon investigation, the commissioner of insurance finds that any insurance company incorporated under the laws of Colorado, is doing business in another state or territory without having first procured a license or authority from such state or territory, if any is required, authorizing it to do business therein, he may revoke the authority of such company to do business in this state.

Legislation. Sec. 3115. Act 1907 § 28, cited under § 3087.

3116. Purposes of organization.

SEC. 30. It shall be lawful for any insurance company organized under the laws of this state:

First: To make insurance on dwelling houses, stores and all kinds of buildings, and upon household furniture and other property against loss or damage by fire, lightning, tornadoes and hail, and the risks of inland navigation and transportation.

Second: To make insurance upon the lives of persons and every insurance appertaining thereto or connected therewith, including health and accident insurance, and to grant, purchase or dispose of annuities.

Third: To make any of the following kinds of insurance: (1) Upon the health of persons; (2) against injury, disablement or death of persons, resulting from traveling or general accidents by land or water; (3) upon the lives of horses, cattle and other live stock; (4) upon plate glass against breakage; (5) upon steam boilers, flywheels and other liability insurance; against explosion and against loss or damage to life or property resulting therefrom; (6) against loss by burglary or theft, or both; (7) guaranteeing the fidelity of persons holding places of trust, public or private; *Provided*, That no company shall be organized to issue policies of insurance for more than one of the above three mentioned purposes; and no company that shall have been organized for one of said purposes shall issue policies or insurance for any other; and no foreign or domestic insurance company shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. of its paid up capital and surplus, unless the same shall be reinsured in some other good and responsible companies authorized to do business in this state.

Legislation. Sec. 3116. Act 1907 § 29, cited under § 3087.

CITATIONS.

The agreements of the company are required to appear in the policy, but not the warranties or statements of the insured.—*Travelers Ins. Co. v. Lampkin*, 5 A. 179, 38 P. 336.

3117. Formation of new companies.

Seco. 31. Whenever any number of persons shall associate to form an insurance company, for any of the purposes named in the preceding sections, and become incorporated in accordance with the provisions of chapter XIX of the General Statutes of 1883, they shall file a copy of the articles of incorporation with the commissioner of insurance, who shall submit the same to the attorney general for examination; and if found by him to be in

accordance with the provisions of this act, and not inconsistent with the constitution of this state, he shall certify and deliver back the same to the commissioner, who shall commission the persons named in the certificate of incorporation, or a majority of them, to open books for the subscription of stock in the company, at such time and place as they shall deem it convenient and proper, and shall keep the same open until the full amount specified in the certificate of incorporation is subscribed.

Whenever such capital stock has been subscribed and not less than the amount required by this act shall have been fully paid in, and deposited with the commissioner of insurance, as required by this act, they shall notify the commissioner, who shall cause an examination to be made, either by himself or some disinterested person, especially appointed by him for the purpose, who shall certify under oath that the provisions of this act have been complied with by said company, as far as applicable thereto. Such certificate shall be filed in the office of said commissioner, who shall thereupon deliver to such company a certified copy thereof, which shall be recorded in the office of the recorder of deeds of the county wherein the company is to be located, before the authority to commence business is granted. The provisions of this section shall also apply in the formation and authorization of domestic life and fire insurance companies formed upon the mutual plan, and to casualty associations formed upon the assessment plan, which are organized with a guaranty fund in lieu of capital as provided in this act.

[Chapter XIX of General Statutes is Chapter 30 of this compilation.]

Legislation. Sec. 3117. Act 1907 § 30, cited under § 3087.

3118. Contracts and policies not require seal.

SEC. 32. All policies or contracts made or entered into by any domestic company, may be made with or without the seal thereof. They shall be subscribed by the president or such other officers as may be designated by their by-laws for that purpose, and shall be attested by the secretary, and, being so subscribed, shall be obligatory upon such company.

Legislation. Sec. 3118. Act 1907 § 31, cited under § 3087.

3119. Insuring infants unlawful.

SEC. 33. From and after the passage of this act it shall be deemed unlawful for any company or person to establish or conduct within the state of Colorado, the business of insuring or causing to be insured by any company or person, any infant or infants or any minor who shall be under the age of fifteen years. Any person violating any or all provisions of this section, or any person found soliciting business for any company, in violation of this section, or any person or persons who shall issue or cause to be issued, policies of insurance on the lives of persons under the age of fifteen years, the same having been issued any time after the passage of this act, shall be deemed guilty of a misdemeanor, and, on conviction, shall be liable to a fine of not less than twenty-five dollars or more than fifty dollars, or shall be imprisoned in the county jail of said county for a term of not less than three months, or more than six months, or shall be both fined and imprisoned, in the discretion of the court, and shall be sentenced to pay all costs of prosecution. Any insurance company violating this section, shall have its authority to do business in this state revoked.

Legislation. Sec. 3119. Act 1907 § 32, cited under § 3087.

3120. Must act through resident agents.

SEC. 34. It shall be unlawful for any foreign insurance company to make, write, place or to cause to be made, written or placed in this state any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against, unless done through its duly and regularly appointed and authorized agent or agents, residents of this state; any insurance company violating this section, shall have its certificate of authority to do business in this state suspended not less than one year, and it shall only be renewed upon a written pledge from the directors or executive body in authority over the officers, that this section will be fully and faithfully observed.

Legislation. Sec. 3120. Act 1907 § 33, cited under § 3087.

3121. Suits in United States court—Consent of both parties.

SEC. 35. No foreign insurance company doing business in this state shall without the consent of the other party to any suit or proceeding brought by or against any citizen of this state, remove said suit or proceeding to any federal court or shall institute any suit or proceeding against any citizen of this state in any federal court. If any foreign insurance company doing business in this state shall violate the provisions of this act, it shall be the duty of the insurance commissioner to forthwith revoke all authority to such company and its agents to do business in this state, and to publish such revocation conspicuously in some newspaper of general circulation, published in the state.

Legislation. Sec. 3121. Act 1907 § 34, cited under § 3087.

CITATIONS.

The statute allowing an attorney's fee is unconstitutional.—*Pacific Life Co. v. Van Fleet*, 47 C. 415, 107 P. 1092.

II. FIRE, LIFE, MUTUAL AND MISCELLANEOUS PROVISIONS.**Section.**

- 3122. Making valuations of life insurance policies—Liability.
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- 3138. Penalty for accepting rebate.
- 3139. Providing for and regulating the election of directors of mutual life insurance companies.
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- 3141. Duties of foreign life and accident companies in relation to payment of policy claims.

II. FIRE, LIFE, MUTUAL AND MISCELLANEOUS PROVISIONS.*Continued.***Section.**

- 3142. Suicide shall not be defense against the payment of a life insurance policy.
 - 3143. Life assessment companies—Valuing policies.
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 - 3156. Foreign mutual companies.
 - 3157. County mutual protective association.
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3122. Making valuations of life insurance policies—Liability.

SEC. 36. For the purpose of making valuations of life insurance policies under the provisions of this act, the rate of interest assumed in valuing policies issued prior to January 1, 1908, shall be four per cent. per annum, and the actuaries' experience table of mortality shall be used, and for valuing policies issued on and after that date the rate of interest shall be three and one-half per cent. per annum, and the rate of mortality shall be established by the table known as the "American Experience Table of Mortality," such valuations to be on the basis of net premiums. For the purpose of estimating the liability of insurance companies other than life, the amount required to safely re-insure all outstanding risks should be estimated by taking fifty per cent. of gross premiums on all risks and policies in force and that have less than one year to run, and pro rata of all gross premiums on risks that have more than one year to run.

Legislation. Sec. 3122. Act 1907 p. 454 § 35, cited under § 3087.

3123. Requiring certain provisions in life policies.

SEC. 37. On and after January 1, 1908, it shall be unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy unless the same shall contain the following provisions:

(1) A provision that all premiums shall be payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the duly authorized officers, unless the first payment is set forth in the policy, in which case the policy itself shall be a receipt.

(2) A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after not more than two years from its date, except for non-payment of premiums and except for violation of the conditions of the policy relating to naval and military service in time of war, or other prohibited risks.

(3) A provision that no statement made by the insured shall avoid the policy unless it is contained in a written application and a copy of such application shall be endorsed upon or attached to the policy when issued.

(4) A provision that if the age of the insured has been under-stated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

(5) A provision which shall fulfill the requirements of section 42 of this act. This provision shall not be required in non-participating policies.

(6) A provision which shall fulfill the requirements of section 43 of this act. This provision shall not be required in term insurances of twenty years or less.

(7) A table showing in figures the loan values, if any, and the options available under the policies each year upon default in premium payments, during at least the first twenty years of the policy, beginning with the year in which such values and options become available.

(8) A table showing the amounts of instalments in which the policy may provide its proceeds may be payable.

Any of the foregoing provisions or portions thereof relating to premiums not applicable to single premium policies, shall to that extent not be incorporated therein.

[Section 42 referred to is section 3129.]

[Section 43 referred to is section 3130.]

Legislation. Sec. 3123. Act 1907 § 36, cited under § 3087.

3124. Prohibiting certain provisions in life insurance policies.

SEC. 38. On and after January 1, 1908, it shall be unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy if it contains any of the following provisions:

(1) A provision for forfeiture of a policy for failure to repay any loans on the policy, or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contain a stipulation that no such forfeiture shall occur until at least one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

(2) A provision limiting the time within which any action at law or in equity may be commenced to less than five years after the cause of action shall accrue.

(3) A provision by which the policy shall purport to be issued or to take effect more than one year before the original application for the insurance was made, if thereby the assured would rate at an age younger than his age not more than one year at date when application was made, according to his age at nearest birthday.

Legislation. Sec. 3124. Act 1907 § 37, cited under § 3087.

3125. Exceptions.

SEC. 39. The provisions of 36 and 37 shall not apply to annuities, industrial policies or to corporations or associations operating on the assessment or fraternal plan.

[Sections 36 and 37 are sections 3123 and 3124.]

Legislation. Sec. 3125. Act 1907 § 38, cited under § 3087.

3126. Violation.

SEC. 40. The certificate or authority of any foreign or domestic life insurance company violating any of the provisions of sections 36 and 37 of this act shall be suspended by the commissioner of insurance, and shall not be renewed until such company fully and completely conforms to the same. Such action by the commissioner shall be subject to review by any court of competent jurisdiction.

Legislation. Sec. 3126. Act 1907 § 39, cited under § 3087.

3127. Approval of policy forms.

SEC. 41. On and after January 1, 1908, no policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, until the form of the same has been filed with the insurance commissioner; and after the commissioner shall have notified any company of his disapproval of any form, it shall be unlawful for such company to issue any policy in the form so disapproved. The commissioner's action shall be subject to review by any court of competent jurisdiction.

Legislation. Sec. 3127. Act 1907 § 40, cited under § 3087.

3128. Policy conditions required by other states.

SEC. 42. The policies of a domestic life insurance company may, when issued or delivered in any other state, territory, district or country, contain any provision required by the laws of the state, territory, district or country in which the same are issued, anything in this act to the contrary notwithstanding.

Legislation. Sec. 3128. Act 1907 § 41, cited under § 3087.

3129. Manner of paying surplus.

SEC. 43. Every policyholder shall on all participating policies hereafter issued, except as provided by section 44, be permitted at the time the first dividend is declared, to select from among the options set forth in the policy the manner and method of the payment of the surplus to be annually apportioned to his policy.

[Section 44 referred to is section 3131.]

Legislation. Sec. 3129. Act 1907 § 42, cited under § 3087.

3130. Non-forfeiture.

SEC. 44. (1) In event of default in payment of any premium due on any policy, provided that not less than three full years' premiums have been paid, there shall be secured to the insured without action on his part as specified in the policy, either paid-up insurance or extended insurance or the application of the net value of the policy as a loan in payment of future premiums, so long as such net value, less the deduction herein provided for, is sufficient to secure such loan with interest added at a rate not exceeding six per cent. per annum, payable annually in advance; the net value applied to one of the options above provided for shall be at least equal to the entire net reserve held by the company on such policy, including dividend additions, if any, less two and one-half per centum of the amount insured by the policy and dividend additions, if any, or one-fifth of such reserve, and less any outstanding indebtedness to the company on a policy at time of default.

There shall be secured to the insured the right to surrender the policy to the company at its home office within one month after date of default for the cash value otherwise available for one of the three said options. But the right to cash dividends or to cash surrender value, provided by sections 42 and 43 of this act, may be specifically waived in the policy.

(2) No agreement between the company and the policyholder or applicant for insurance shall be held to waive any of the provisions of sections 42 and 43, except as herein provided.

[Sections 42 and 43 referred to are sections 3129 and 3130.]

Legislation. Sec. 3130. Act 1907 § 43, cited under § 3087.

3131. Annual apportionment and accounting as to surplus—Form.

SEC. 45. (1) Every life insurance company doing business in this state, conducted on the mutual plan, or in which policyholders are entitled to share in the profits or surplus, shall, on all policies of life insurance hereafter issued, under the conditions of which the distribution of surplus is deferred to a fixed or specified time and contingent upon the policy being in force and the insured living at that time, annually ascertain, beginning at the end of the fifth policy year, the amount of surplus to which all such

policies as a separate class are entitled, and shall annually apportion to such policies as a class the amount of surplus so ascertained, subject to the mortality experience of the company to the end of the dividend period. Every company having in force any such deferred dividend policies, shall on application from a policyholder at the time of the mailing of the annual premium notice, furnish to such policyholder an annual statement showing the contingent surplus accumulation to the credit of the policy at the beginning of the preceding year, the rate of interest earned on the accumulation, the amount of interest and the amount of saving and profit contingently credited to said policy during the preceding year, with the showing of the total amount of surplus accumulation then contingently accredited to the policy, which statement shall be made in accordance with the following form:

"STATEMENT OF ANNUAL APPOINTMENT OF SURPLUS.

Policy No.	Distribution Period.....
Yrs.: Age of issue.....	Surplus accumulation contingently
	credited to policy as per last annual statement.....
\$.....	Interest credit: Net rate earned by company.....
.....; per cent.....	Savings and profit
additional for year
Contingent Surplus Credit.....	19.....\$.....

	Secretary."

(2) This section shall not apply to industrial policies.

Legislation. Sec. 3131. Act 1907 § 44, cited under § 3087.

3132. Regulating vouchers for disbursements.

SEC. 46. No domestic life insurance company shall make any

disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money, and correctly describing the consideration for payment. If the expenditure be for both services and disbursements, the voucher shall set forth the services rendered and an itemized statement of the disbursements made. If the expenditure be in connection with any matter pending before any legislative or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher can not be obtained, the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure, and stating the reason for not obtaining such voucher.

Legislation. Sec. 3132. Act 1907 § 45, cited under § 3087.

3133. Relating to the salaries of officers and agents of life insurance companies.

SEC. 47. No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such life insurance company. No such company shall grant any pension to any officer, director or trustee thereof, or to any member of his family after his death.

Legislation. Sec. 3133. Act 1907 § 46, cited under § 3087.

3134. Prohibiting the diversion of funds for political purposes.

SEC. 48. No insurance company or association, including fraternal beneficiary associations doing business in this state, shall, directly or indirectly, pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for politi-

cal purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director or stockholder, attorney or agent of any corporation or association which violates any of the provisions of this act, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this act, shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of this act, shall be liable to the company or association for the amount so contributed.

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding.

Legislation. Sec. 3134. Act 1907 § 47, cited under § 3087.

3135. Prohibiting misrepresentations by life insurance companies.

SEC. 49. No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Violation of

this section by an agent or officer of an insurance company, shall be a misdemeanor and punished by a fine of five hundred dollars or imprisonment in the county jail for sixty (60) days, or by both such fine and imprisonment; and if a company violates or participates in the violation of this section, such company shall have its certificate of authority to do business in this state suspended for a period not exceeding six months for each offense.

Legislation. Sec. 3135. Act 1907 § 48, cited under § 3087.

3136. Prohibiting rebating and discrimination.

SEC. 50. No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured) of the same class and equal expectation of life in the amount of payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. Nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor or representative thereof pay, allow or give or offer to pay, allow or give, directly or indirectly, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the policy contract of insurance; nor give, sell or purchase or offer to give, sell or purchase, as inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatever, not specified in the policy.

Every officer or agent of any insurance company doing business in this state, who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred

(100) dollars, nor exceeding five hundred (500) dollars, or imprisonment in the county jail of not less than thirty (30) days, nor more than ninety (90) days, or both, in the discretion of the court, and shall pay the costs of the prosecution.

It shall be the duty of the commissioner upon being satisfied that any such insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending.

Legislation. Sec. 3136. Act 1907 § 49, cited under § 3087.

CITATIONS.

The agreements of the company are required to appear in the policy, but not the warranties or statements of the insured.—*Travelers Ins. Co., v. Lampkin*, 5 A. 179, 38 P. 336.

3137. Prohibiting certain practices.

SEC. 51. From and after the date this act takes effect no life insurance company shall issue in this state, nor permit its agents, officers or employees to issue in this state, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance; and on and after January 1st, 1908, no life insurance company shall be authorized to do business in this state, which issues or permits its agents, officers or employees to issue in the state of Colorado or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance, and no corporation or stock company, acting as agent of a life insurance company, nor any of its agents, officers or employees, shall be permitted to agree, sell, offer to sell or give, or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith; *Provided*, That nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment hereof, or prevent the payment of the dividends or returns therein stipulated to be paid. It shall be

the duty of the commissioner upon being satisfied that any such insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agents so offending.

Legislation. Sec. 3137. Act 1907 § 50, cited under § 3087.

3138. Penalty for accepting rebate.

SEC. 52. Any person knowingly receiving any rebate or allowance or reduction from any premium, or any special contract of employment, or promising profits or dividends of any character, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy contract, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of one hundred (100) dollars or imprisonment in the county jail for thirty (30) days, or both, in the discretion of the court: *Provided*, That this section shall not apply to the payment of dividends upon contracts made as inducements prior to the enactment hereof.

Legislation. Sec. 3138. Act 1907 § 51, cited under § 3087.

3139. Providing for and regulating the election of directors of mutual life insurance companies.

SEC. 53. (1) Every mutual life insurance company organized in this state shall classify its trustees, directors, or governing board, so that the terms of at least one-third of the members thereof shall expire each year.

(2) Each policyholder of any such company shall be a member thereof and entitled to vote at all meetings and elections, and the company shall notify each member of every meeting and election to be held, by mailing a notice thereof in a sealed envelope, addressed to him at his last known residence, at least ninety days prior thereto.

(3) Any person may become a candidate for the position of trustee, director or member of the governing board, by the nomination of one hundred policyholders, notice of which nomination shall be made in writing and delivered personally or by mail to

the secretary of the company, at least sixty days prior to the date of the election. No person who has not been so placed in nomination shall be eligible to election.

(4) All such elections, except those to fill vacancies caused by death, resignation or removal of members, shall take place at the annual meeting of the company, and the members of said company may, as hereinafter provided, cast their votes personally, by mail, by proxy or by representative.

(5) At such annual election, when more than one person is to be elected, each voter may cast votes up to the number to be elected, and he may cast all of such votes for one person, or may distribute them among the number to be voted for in such numbers, as between candidates, as he may see fit. Persons voting on behalf of others may vote as herein provided on behalf of those for whom they are authorized to act.

(6) At least thirty days before the election the company shall mail to each policyholder, in a sealed envelope containing a return envelope addressed to the secretary of the company, a list of the candidates to be voted for, to which shall be attached sufficient instructions advising said member as to how he may vote, and no list or instructions shall be mailed by the company unless the form of the same is approved by the commissioner of insurance. The member may thereupon indicate his choice upon said ballot, and, having signed it, mail the same or deliver or cause the same to be delivered to the company or its secretary, and all lawful votes so received by the company or its secretary, up to and including the time of closing the polls at said election, shall be kept sealed up and intact until that time, and then shall be duly counted.

(7) No company shall incur any expense for or on account of any such election or reimburse any person for any such expense other than as herein authorized: and every director, trustee, officer and agent of the company, within sixty days after such election, shall file with the commissioner of insurance when required by such commissioner, an affidavit setting forth all disbursements made and expenses incurred by him in connection with such election and in attempting to promote the interests of any candidate or candidates. No such company or officer thereof shall compel

any expense, effort or influence by any agent or employe of the company for or in behalf of any candidate.

(8) Any member of said company may execute a proxy to another member, authorizing such other to vote and act as his proxy at said election; but no person shall vote or act as proxy for more than twenty members, or shall act or vote under the direction of one who holds or controls the proxies of more than twenty members. All proxies shall be filed with the company at least one day prior to the day of election, and shall expire within six months from their date.

(9) Whenever not less than one hundred members of any company, who are residents of any one state or territory, or of the District of Columbia, at least four months prior to the time fixed for the election of any member of the governing board of the company, shall make a demand in writing therefor, by mail or personal delivery, to the company, the company shall appoint a time, at least thirty days prior to the date of said election, and a place in the capital city of such state, territory or district, for the election of a representative of the members of the company resident therein, who may join in his election. Said demand for the election of a representative shall also name three persons who shall, with three persons to be selected by the company, act as supervisors of such local election and receive and count the ballots cast for representative thereat, and certify the result to the company. Any member of the company, eligible as proxy, resident in such state or territory, shall be eligible to act as such representative.

(10) The company shall notify each member thereof, resident in such state or territory or district, of the time and place fixed for said local election of representatives, by mailing a notice thereof, in a sealed envelope directed to said member at his last known place of residence, at least thirty days prior to the date fixed for the election of said representative. Inclosed with said notice shall be an envelope, properly addressed to the supervisors of said election, and also containing a blank ballot, which shall be dated and signed by the member and at least one witness, and be in form as follows:

I, The holder of policy No., in the (name of com-

pany), hereby vote for.....as the representative of the policyholders of the state of (name of the state), at the annual election of said company, to be held at (place), (date). 19—, and authorize him, or the person who may be duly elected as such representative by the policyholders of the state of (name of state), to act as my proxy at said annual meeting, and vote and act for me in my name, as my attorney in fact, fully and in the same manner as I might were I personally present at said annual election.

(11) The members of said company may vote at said local election personally or by mail, as hereinbefore set forth, and the person receiving the highest number of votes cast in said election shall be elected the representative, and the person receiving the highest number of votes the alternate representative, of the members voting at said election. The representative, or, in case of his failure or inability to act, the alternate, may act as proxy of all the members of said company voting at such local election, and shall have full power as such to cast each of their votes at the annual meeting of the company next ensuing after his election, in the same manner and with the same effect as though such member was present and voting at said meeting. No member voting at said election of representative, shall be permitted to vote at the annual meeting of the company, to attend which such representative was chosen, except through such representative or alternate.

(12) When five hundred or more members shall have voted at the election whereat he was elected, the company shall pay the reasonable expenses of the representative from his residence to the place of holding the annual meeting of the company and return.

(13) Whenever a representative has hereafter been elected in any state, territory or district, and more than five hundred members of the company have participated in such election, there shall thereafter annually be held an election for representative without any further demand therefor, and the company shall arrange for the holding of said election in the same manner as though a specific demand had been duly made for the holding of said local election. If at any such local election less than five hundred

policyholders vote, such election shall not again be required until a demand therefor is made as hereinbefore provided.

(14) Any person who is a candidate for the position of director, trustee or member of the governing board of such company, or for the representative of the members in any state, territory or district, shall have the right personally, or by an agent duly appointed by him, to inspect the ballots cast at any such annual or local election.

Legislation. Sec. 3139. Act 1907 § 52, cited under § 3087.

3140. Relating to the annual reports of life insurance companies.

SEC. 54. In addition to any other matter which may be required by law or pursuant to law by the commissioner of insurance to be stated therein, every annual report of every life insurance company doing business in this state shall contain an accurate, concise and complete statement of the following matters, to-wit: (1) All the real property held by the company, the dates of acquisition, the names of the vendors, the actual cost, the value at which it is carried on the company's books, the market value, the amounts expended during the year for repairs and improvements, the gross and net income from each parcel, and if any portion thereof be occupied by the company, the rental value thereof, and all purchases and sales made since the last annual statement, with particulars as to dates, names of vendors and vendees, and the consideration. (2) The amount of existing loans upon the security of real property, stating the amount loaned upon property in each state and foreign country. (3) The moneys loaned by the company to any person other than loans upon the security of real property above mentioned, and other loans upon policies, the actual borrowers thereof, the maturity and rate of interest of such loans, the securities held therefor, and all substitutions of securities in connection therewith during the current year and the same particulars with reference to any loans made or discharged since the last annual statement. (4) All other property owned by the company, or in which it has any interest (including all securities, whether or not recognized by the law as proper investments), the

dates of acquisition, from whom acquired, the actual cost, the value at which the property is carried upon the books, the market value, the interest or dividends received thereon, during the year; also all purchases and sales of property other than real estate made since the last annual statement, with particulars as to dates, names of purchasers and sellers and the consideration; and also, the income received and outlays made in connection with all such property. (5) All commissions paid to any person in connection with loans or purchases or sales of any property, and a statement of all payments for legal expenses, giving particulars as to dates, amounts and names and addresses of payees. (6) All moneys expended in connection with any matter pending before any legislative body or any officer or department of government, giving particulars as to dates, amounts, names and addresses of payees, the measure or proceeding in connection with which payment was made, and the interest of the company therein. (7) The names of the officers and directors of the company, the proceedings at the last annual election, giving the names of candidates and the number of votes cast for each, and whether in person, by proxy or by mail. (8) The salary, compensation and emoluments received by officers or directors, and where the same amounts to more than five thousand dollars, that received by any person, firm or corporation, with particulars as to dates, amounts, payees and the authority by which the payment was made; also all salaries paid to any representative either at the home office or at any branch office, or agency, for agency supervision. (9) The largest balances carried in each bank or trust company during each month of the year. (10) All death claims resisted or compromised during the year, with particulars as to sums insured, sums paid and reasons assigned for resisting or compromising the same in each case. (11) A complete statement of the profits and losses upon the business transacted during the year, and the sources of such gains and losses, and a statement showing separately the margins upon premiums for the first year of insurance, and the actual expenses chargeable to the procurement of new business incurred since the last annual statement. Any company, issuing or having issued both participating and non-participating policies, shall make a separate statement of profits and losses, margins and expenses, as

aforesaid, with reference to each of said kinds of business, and also showing the manner in which any general outlays of the company have been apportioned to each of such kinds of business. (12) A statement separately showing the amount of the gains of the company for the year, attributable to policies written after

December thirty-first, nineteen hundred and....., and the precise method by which the calculation has been made. (13) The rates of annual dividends declared during the year for all plans of insurance and all durations, and for ages at entry, twenty-five, thirty-five, forty-five and fifty-five, and the precise method by which such dividends have been calculated. (14) A statement showing the rates of dividends declared upon deferred dividend policies completing their dividend periods for all kinds of insurance, and the precise methods by which said dividends have been calculated. (15) A statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred dividend periods longer than one year for all plans of insurance and all durations, and for ages of entry as aforesaid, together with the precise statements of the methods of calculation by which the same have been provisionally or otherwise determined. (16) A statement of any and all reserve or surplus funds held by the company, and for what purpose they are claimed respectively to be held.

[Are insurance companies required to file an annual report with secretary of state? See section 911.]

Legislation. Sec. 3140. Act 1907 § 53, cited under § 3087.

A personal liability is imposed for failure to file the report required by § 911 and we therefore suggest that the query of the official note should be answered in the affirmative.

3141. Duties of foreign life and accident companies in relation to payment of policy claims.

SEC. 55. Any foreign life or accident insurance company doing business in the state of Colorado, and where the insurance contract is made in this state, shall pay its obligations when same are due and payable through its agent in the county where the contract was made, or at the office of its general agent within this state, after approval by the proper officers at the home office

of the company, upon presentation of the insurance contract and proofs required thereunder by the insured, assigns or beneficiaries. This insurance contract shall be deemed to be made and payable in the state of Colorado, if made through an authorized agent of such insurance company within this state, irrespective of where the insurance contract may be written.

Any foreign life or accident insurance company that contests any claim for insurance, and has final judgment rendered against it, shall be taxed with all costs, including a reasonable attorney's fee for the attorney for the successful party, such fees to be fixed by the court before whom the case was tried.

Where the verdict or finding in any such case shall be for the plaintiff, and the verdict of the jury or the finding of the court, if tried without a jury, shall state that said defense of said company was frivolous or instituted for the purpose of delay, then a penalty not exceeding twenty-five per centum of the amount recovered shall be added to said judgment.

Legislation. Sec. 3141. Act 1907 § 54, cited under § 3087.

CITATIONS.

The statute allowing an attorney's fee is unconstitutional.—*Pacific Life Co., v. Van Fleet*, 47 C. 415, 107 P. 1092.

3142. Providing that suicide shall not be a defense against the payment of a life insurance policy.

SEC. 56. From and after the passage of this act, the suicide of a policyholder after the first policy year, of any life insurance company doing business in this state, shall not be a defense against the payment of a life insurance policy, whether said suicide was voluntary or involuntary, and whether said policyholder was sane or insane.

Legislation. Sec. 3142. Act 1907 § 55, cited under § 3087.

CITATIONS.

A certificate in a mutual benefit association was a life insurance policy within the act of 1903, which act was not unconstitutional.—*Head Camp of Woodmen v. Sloss* (Dec. 1910), 112 P. 49.

3143. Life assessment companies—Valuing policies.

SEC. 57. No life insurance company organized upon the mutual assessment plan or which issues contracts, the performance of which is contingent upon the payment of assessments or calls made upon its members, shall do business in this state, except such companies as are now authorized to do business in this state and which shall value their assessment policies or certificates of membership as yearly renewable term policies, according to the standard of valuation of life insurance policies prescribed by the laws of this state, and no such company shall provide in any contract of insurance for any cash or other benefit to accrue to any living member or policyholder or to any beneficiary except a death benefit from life insurance upon the yearly renewable term plan.

Legislation. Sec. 3143. Act 1907 § 56, cited under § 3087.

3144. Examination fire insurance policy—Cancellation.

SEC. 58. That the commissioner of insurance shall have power and it shall be his duty to examine the form of all policy contracts hereafter issued or proposed to be issued by any fire insurance company, association or corporation now authorized by law or that may hereafter apply to be authorized to transact business of fire insurance in this state. The commissioner shall refuse to authorize any such company, association or corporation to do business in this state, whenever the form of policy contract issued or proposed to be issued by any such company, association or corporation does not provide for the cancellation of the same at the request of the insured upon equitable terms; or whenever the form of policy does not provide that in case the policy shall be cancelled at the request of the insured, the premium having been actually paid, that the unearned portion shall be returned on surrender of the policy or last renewal, the company in no event retaining an amount in excess of the amount shown to be the earned portion of said premium, as per the customary short rate table. In consequence of any violation of this section, it shall be the duty of the commissioner to revoke the authority of such company to do business in this state, and the same shall not be renewed during a period of six months thereafter.

Legislation. Sec. 3144. Act 1907 § 57, cited under § 3087.

3145. Fire or casualty agents to countersign policies—Reinsurance.

SEC. 59. (1) No foreign fire or casualty insurance company doing business in this state, shall make, write, place, or cause to be made, written or placed any policy, duplicate policy or contract of insurance of any kind or character or any general or floating policy, upon persons or property, resident, situated or located in this state, except after the said risk has been approved, in writing, by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies so issued, and receive the commission thereon, when the premium is paid, to the end that the state may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in this state.

(2) No fire or casualty insurance company shall reinsure in any manner whatsoever, the whole or any part of a risk taken by it on property or persons resident, situated or located in this state, in any other company or association not authorized to transact business in this state. No fire or casualty insurance company shall transfer or cede, in any manner whatsoever, to any company or association not authorized to transact business in this state. No fire or casualty insurance company shall transfer or cede, in any manner whatsoever, to any company or association not authorized to do business in this state, any risk or liability or any part thereof assumed by it, under any form of contract of insurance, covering property located in this state, including any risk or liability under any general or floating policy, or any agreement, general, floating or specific, to reinsure excess loss. No fire or casualty insurance company shall reinsure or assume as a reinsuring company, or otherwise, in any manner or form whatsoever, the whole or any part of any risk or liability, covering property located in this state, of any insurance company not authorized to transact business in this state.

(3) Whenever the commissioner of insurance shall have or receive any information that any foreign fire insurance company has violated any of the provisions of paragraph 1 of this section, he is authorized at the expense of such company to examine, by

himself or his accredited representative, at the principal office or offices of such company, society, association or partnership, located in the United States of America, or in any foreign country, and also at such other offices or agencies of such company, as he may deem proper, all books, records and papers of such company, and may examine under oath the officers, managers and agents of such company, as to such violation or violations. The refusal of any such company to submit to such examination or to exhibit its books and records for inspection, shall be presumptive evidence that it has violated the provisions of paragraph 1 of this section, and shall subject it to the penalties prescribed and imposed by this act.

(4) Every fire insurance company shall annually and at such other times as the commissioner may require, in addition to all returns now by law required of it or its agents or managers, make a return to the commissioner, in such form and detail as may be prescribed by him of all reinsurance cessions of risks or liabilities contracted for or effected by it, whether by issue of policy, entry bordereau, or general participation agreement, or by excess loss reinsurance, or in any manner whatsoever, upon property located in this state, or covering, whether specified or otherwise, any risk or liability upon property so located, such return to be certified by the oath of its president and secretary, if a company of one of the United States, and, if a company of a foreign country, by the oath of its managers in the United States, as to such reinsurance cessions effected through its branch office in the United States, and by the oath of its president and secretary, or by officers corresponding thereto, at its home office wherever located, as to reinsurance or cessions as aforesaid, contracted for or effected through the foreign office. The refusal of any such company to make the returns herein required, shall be presumptive evidence that it is guilty of violating the provisions of the second section of this act, and shall subject it to the penalties prescribed and imposed by this act.

(5) Any fire insurance company wilfully violating or failing to observe and comply with any of the provisions of this act, applicable thereto, shall have its authority to transact business in

the state revoked by the commissioner of insurance, and such revocation shall continue for at least one year from the date thereof, nor shall any fire insurance company whose authority to transact business in this state shall have been so revoked, be again authorized or permitted to transact business herein until it shall have filed in the office of the commissioner a certificate signed by its president or other chief officer, to the effect that the terms and obligations of the provisions of this act are accepted by it as a part of the conditions of its right and authority to transact business in this state.

(6) Any fire insurance company which shall hereafter apply to enter this state to transact business as a new company or to have its certificate of authority renewed, shall, before permission is given to transact business, or before the renewal of its certificate of authority be issued, file with the commissioner of insurance a certificate, signed by its president or other chief officer of such company, to the effect that the terms and obligations of the provisions of this act are accepted by it as a part of the conditions of its right and authority to transact business in this state.

Legislation. Sec. 3145. Act 1907 § 58, cited under § 3087.

3146. Guaranty fund of mutual companies.

SEC. 60. Guaranty fund certificates may be issued to provide a guaranty fund for domestic life and fire insurance companies incorporated upon the mutual plan, and for domestic casualty insurance associations incorporated upon the assessment plan; such fund to be held as security for the payment of all losses and other policy liabilities of such companies. Guaranty fund certificates may draw interest or dividends not exceeding in the aggregate eight per cent. (8%) per annum, which shall only be paid from the profits of the company. Said certificates can only be retired or redeemed by using the profits of the company for that purpose, but the full fund as required of each kind of mutual and assessment company by this act must at all times be maintained. Such guaranty fund shall be a liability until redeemed or retired. It shall only be used to pay policy claims or liabilities when the contingent mutual liability of the policyholders has been drawn

upon and found insufficient to meet the losses of policy claims, or when the directors from any cause fail to provide for the payment of policy claims. Upon satisfying himself of such failure, the commissioner of insurance shall suspend the certificate of authority of such company, and apply to the district court for an order restraining said company from doing further business, and the court may appoint a receiver or issue such decrees and orders as may best serve the interest of the members or policyholders and of the public; and the disbursement or distribution of the guaranty fund shall then be made under the court's direction; *Provided, however,* That the fund shall first be used to pay policy claims or losses, and if any of the fund then remains, it shall be used to pay creditors, if any, and the then remaining portion of the fund shall be used to redeem outstanding guaranty fund certificates, or if none are outstanding, it shall be distributed among the members of the company, as the court may direct.

The profits of a domestic mutual insurance company or association are that portion of its cash funds not required for the payment of losses and expenses, not set apart for the unearned premium reserve or any other purpose required by law.

Legislation. Sec. 3146. Act 1907 § 59, cited under § 3087.

3147. Reinsurance.

SEC. 61. No domestic insurance company organized upon the mutual or the assessment plan shall transfer its risks to, or re-insure them in, any other corporation, unless the said contract or transfer or reinsurance is first submitted to and approved by two-thirds vote of the membership to be taken by person, mail or proxy, at a meeting of the insured called to consider the same, of which meeting a written or printed notice clearly describing its purpose shall be mailed to each policyholder, or indemnity certificate holder, not less than twenty days nor more than ninety days before the day fixed for said meeting, and, in case said transfer or reinsurance shall be so approved, every policyholder or indemnity certificate holder of the said corporation who shall file with the secretary, within ten days after said meeting, written notice of his preference to be transferred to some other corpora-

tion than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of said contract had he been transferred to the corporation named therein. Before issuing the call aforesaid, a certified copy of such proposed contract of transfer or reinsurance shall be filed in the insurance department, and the call for such meeting shall be submitted to the commissioner of insurance for his approval. The meeting and the counting of votes shall be held and done under the supervision of the commissioner, for the purpose of seeing that the by-laws of the company and the laws of the state are faithfully observed, and the commissioner shall before the transfer is finally made, report to the governor upon the nature of the contract of reinsurance or transfer, and also as to the methods employed to secure the consent of the members or policyholders thereto, and as to the disposition of any funds belonging to the members or policyholders of the company that is to be reinsured, and the said commissioner may, if in his judgment the law has been violated or the members are to be wrongfully deprived of any of their rights, or of their joint assets, apply, with the consent of the governor, to the district court for an injunction restraining such transfer or reinsurance. In case such transfer or reinsurance of the corporation is to result in any increase in the premium or rates of insurance of those already holding contracts, or in any reduction of the amount of insurance, in lieu of such advance in premiums, the facts shall be set forth in the call for the meeting.

Legislation. Sec. 3147. Act 1907 § 60, cited under § 3087.

3148. Fees, etc., mutual companies.

SEC. 62. Mutual and assessment companies shall, unless otherwise specified in this act, be required to pay the same fees, and be under the same supervision and authority of the commissioner of insurance as companies which are engaged in the same kind of insurance business and which are organized upon the joint stock plan; and shall comply with the general laws of division I of this act, unless otherwise specified, and be subject to the penalties provided therein.

[Division I includes sections 3087 and 3121.]

Legislation. Sec. 3148. Act 1907 § 61, cited under § 3087.

3149. Ownership of profits.

SEC. 63. Every domestic insurance company incorporated upon the mutual or assessment plan shall state clearly in its policies or certificates that the accumulations of profits of such corporations over and above all proper liabilities, shall be the sole property of the members or policyholders in good standing, and that the same shall be distributed in a just and equitable manner, in case such company is reinsured or ceases to do business.

Legislation. Sec. 3149. Act 1907 § 62, cited under § 3087.

3150. Mutual fire insurance companies.

SEC. 64. Twenty-five or more persons, citizens of this state, may form a corporation to carry on the business of fire insurance on the mutual plan; but no such corporation shall begin to do business until a guaranty fund of at least twenty-five thousand (25,000) dollars has been provided and deposited in cash or in such securities as are permitted by law in case of stock companies, with the commissioner of insurance, under the conditions named in this act; the same to be held as security for the payment of all losses and other policy liabilities of such company. Any company so incorporated shall thereupon have the power to elect directors by a vote of incorporators, but the directors so selected shall serve but one year, when an election by the members shall be held. The number of such directors shall be not less than nine nor more than fifteen, and in all meetings of the members each shall have one vote and shall vote in person, by mail or by proxy; but no one person shall vote more than five proxies. When such company has paid the fees required by law, and fully complied with all other statutes, the commissioner of insurance shall furnish such company with a certificate of authority to do business in this state, and shall issue to such company, as provided for other insurance corporations, a certificate showing the amount and purpose of the guaranty fund deposit with the insurance department. Every such company must in its by-laws, and must in its policies, fix by a uniform rule the contingent mutual liability of its members for the payment of losses and expenses; and such contingent liabilities shall not be less than one nor more than three annual

cash premiums, in addition to the one that is written in the policy; and such liability shall be agreed to in writing by each applicant for insurance, before the policy is issued; but such liability shall cease with the expiration of the time for which a cash premium has been paid in advance, except for liability incurred during such time; but nothing in this section shall apply to mutual protective associations organized as provided in this act. No mutual fire insurance company shall have the power to insure the property of others than members of the company. No notes shall be accepted for a premium or a part of a premium, or as a part of any fund of a mutual fire insurance company, nor valued as an asset, unless such note shall be and shall state upon its face that it is a lien upon the property insured, and said note shall thereupon be recorded in the office of the clerk and recorder of the county where the property is situated, and shall be and become a lien upon such property of like force and effect as a mortgage against the same, and no such note shall be surrendered, nor any part of the cash paid upon the premium returned, while the policy for which it was given remains in force. The fee for the recording of such notes shall be twenty-five cents in each case.

Legislation. Sec. 3150. Act 1907 § 63, cited under § 3087.

CITATIONS.

Requirements of G. S. sec. 1704 considered as to mutual insurance companies.—*Spruance v. Farmers' & M. Ins. Co.*, 9 C. 73, 78, 10 P. 285.

3151. Liability of members of mutual fire insurance companies.

SEC. 65. Every person who effects insurance in a mutual fire insurance company and continues to be insured, and his heirs, executors, administrators and assigns shall thereby become members of the company, during the period of insurance, and shall be bound to pay for losses and such necessary expenses as accrue in and to the company in proportion to the original amount of his deposit note or contingent liability; and the directors shall, as often as they deem necessary, settle and determine the sum to be paid by the several members thereof, and publish the same in such

manner as they may choose, or as the by-laws prescribe, and the sum to be paid by each member shall always be in proportion to the original amount of such liability, and shall be paid to the officers of the company within thirty days next after the publication or mailing of such notice; *Provided*, That whenever such company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses, it shall be deemed as having impaired its capital, and shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor, in proportion to the several liabilities; and no such company shall borrow money or create a debt, unless for necessary operating expenses to continue beyond the period when such assessment may be collected and applied to the payment thereof, and no member shall be assessed for liabilities incurred prior to his membership.

Legislation. Sec. 3151. Act 1907 § 64, cited under § 3087.

3152. Enforcement of assessment.

SEC. 66. If a member neglect or refuse, for a space of thirty days after the publication or mailing of notice of an assessment, and after demand for payment, to pay the sum assessed upon him as his proportion of any loss or expense as aforesaid, the corporation may sue for and recover the whole amount of contingent liability, with cost of suit; but execution shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of losses or expenses for which the assessment is made. If the whole amount of the contingent liability of members shall at any time be insufficient to pay expense and the losses occasioned by any fire or fires, the insured who are entitled to receive payment for losses sustained, for which the company is liable upon its policies, shall receive from and out of such contingent liabilities of members on account of their respective losses a proportionate share of the whole amount of such liability, according to the amount of their respective losses; *Provided, however*, That nothing herein contained shall be deemed nor construed to affect or take away the rights of such policyholders in the guaranty fund of such company; *And provided*,

further, That no member of such company shall ever be required to pay for any expense or loss occasioned by fire, more than the whole amount of his contingent liability.

Legislation. Sec. 3152. Act 1907 § 66, cited under § 3087.

3153. Notice of assessment.

SEC. 67. In actions for the recovery of assessments duly levied by the directors of any mutual fire insurance company of this state, or for money due on the liability of the members of any such company, the official statement of the president or secretary of such company, under seal, and sworn to, shall be received in court as evidence of the facts essential for making the same, and that such assessment, for the non-payment of which any such action is commenced, has been duly levied, and notice thereof given.

Legislation. Sec. 3153. Act 1907 § 66, cited under § 3087.

3154. Insert word mutual.

SEC. 68. Every mutual fire insurance company shall embody the word "Mutual" in its title which shall appear upon the first page of every policy and renewal receipt, in some suitable manner.

Legislation. Sec. 3154. Act 1907 § 67, cited under § 3087.

3155. Premium notes not negotiable.

SEC. 69. Mutual fire insurance companies which shall receive notes in consideration of premiums on their policies, shall be required to insert on the face of each note the following words, to-wit: "It is hereby understood and agreed that this note is not transferable."

Legislation. Sec. 3155. Act 1907 § 68, cited under § 3087.

3156. Foreign mutual companies.

SEC. 70. Any mutual fire insurance company organized under authority other than that of Colorado, before being authorized to do business in this state, shall be required to file a certificate from the insurance department of its home state, certifying to the fact

that such company has assets amounting to not less than \$200,000 over and above all liabilities.

Legislation. Sec. 3156. Act 1907 § 69, cited under § 3087.

3157. County mutual protective association.

SEC. 71. Twenty-five or more persons, citizens of Colorado and owning insurable property in any county in this state, may form a county mutual protective association in such county, for the purpose of insuring each other against loss by fire, lightning, tornado, windstorm or hailstorm, on property situated in the county in which the headquarters of the association are located, and in not more than four other counties adjacent thereto; and may assess and collect from each other such sums of money as may be necessary to pay losses from fire, lightning, tornado, windstorm or hailstorm, from time to time as such losses occur, and to pay such expenses as may be approved by the board of directors; *Provided*, That The Grange or similar fraternal organizations now operating upon the lodge plan may operate under this section in all or any of the counties of this state. The assessment and collection of such sums shall be regulated by the constitution and by-laws, which must, however, provide that assessments to cover losses cannot be levied in advance of the occurrence of such losses. The name of such association shall be "County Protective Association," preceded by the name of the county or town where the headquarters of the association are located, or by some other appropriate name; and the articles of incorporation shall state the name of the town or city in which the head office of the association shall be located, and of the counties in which it will do business. They shall also state the object of the organization as being one or more of the objects set forth in this section, and to enforce any contract which may be by them entered into, by which those entering therein shall agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members. The kinds of property proposed to be insured, and the casualties specified in this section proposed to be insured against, shall also be specified in the articles of incorporation.

After a certified copy of these articles is filed with the com-

missioner of insurance and approved by the attorney general, and the incorporators are advised that the same is approved, they may proceed to select directors and officers and to make their constitution and by-laws, a copy of which shall be filed with the commissioner of insurance. The directors selected by the incorporators shall not be less than nine (9) nor more than fifteen (15) in number, and shall serve but one year, when an election by the members shall be held, and the term of no director thereafter shall be more than three years. Members shall have one vote each, and shall vote for directors in person or by mail or by proxy, but no person shall vote more than five proxies. Such association shall in no instance have the power to insure the property of others than members of the association, and all policies issued by the association must state specifically that the liability of each member is not limited. All persons becoming members of such association must sign the constitution and by-laws, and shall be held in law to comply with all the provisions and requirements of the association. Before granting any insurance, such an association shall file with the commissioner of insurance, in addition to a certified copy of the articles of incorporation approved by the attorney general, a copy of the constitution and by-laws and forms of certificates of membership, or of insurance; and if the commissioner finds that the laws have been complied with, he shall issue a certificate of authority for such association to commence business. Such association shall pay to the commissioner of insurance for the state, the following fees:

For filing articles of incorporation, ten (10) dollars;

For certificate of authority, annually, five (5) dollars;

For filing annual statement, five (5) dollars;

For agent's or solicitor's licenses, two (2) dollars each, annually.

Such associations shall make such statements of accounts and of the record of the business and financial condition as may be required by the commissioner of insurance, who shall furnish blank forms for such purpose; and the commissioner shall have the same right to visit and examine such associations, and the same supervisory authority over such associations, as is given him by law over other mutual companies or associations; and he shall have

the power to revoke the license of such associations for failure to settle losses with reasonable promptness, and publish such revocation in such manner as may best serve the interests of the policyholders and the public.

No such association shall insure any property beyond the limits of the territory comprised in the formation of the company, as herein provided, nor shall they insure any property within the limits of any city containing over ten thousand inhabitants at the time of the organization of such association.

Legislation. Sec. 3157. Act 1907 § 70, cited under § 3087.

3158. Assessment accident associations.

SEC. 72. (1) Every contract whereby a benefit is to accrue to a party or parties named therein, upon the accidental death, or physical disability from accident or sickness of a person, which benefit is in any degree conditioned upon the collection of an assessment upon persons holding similar contracts, shall be deemed a contract of accident or casualty insurance upon the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly authorized corporations, which shall be subject to the provisions and requirements of this section and the general laws governing insurance companies in this state, except as herein otherwise provided; but nothing herein contained shall be construed as applicable to organizations which conduct their business as fraternal societies, on the lodge system, or to organizations which do not employ paid agents in soliciting business, or limit their certificate-holders to a particular order or fraternity.

(2) Twenty-five or more persons, citizens of this state, may form a corporation to carry on the business of casualty insurance on the assessment plan, but no such corporation shall begin to do business until a guaranty fund of at least ten thousand (10,000) dollars has been provided and deposited in cash or in such securities as are permitted by law in case of stock companies, with the commissioner of insurance, under the conditions named in this act. When this is done and at least two hundred persons have subscribed in writing to be insured, and when each has paid in at

least one monthly assessment or premium, the commissioner of insurance shall, if the laws have been complied with, issue a certificate of authority for such corporation, which shall authorize it to commence business. The word "Association" shall be used in the title or name of all corporations organized under this section, instead of the word "Company."

(3) Every policy or indemnity certificate hereafter issued by any casualty corporation doing business in this state, shall show in plain and legible print at the top and on the face of same, these words: "Incorporated on the Assessment Plan."

(4) There shall also be printed plainly and legibly in every such policy or certificate issued, the minimum and maximum limit of the contingent mutual liability of the person to whom the policy is issued, which limit and amount of liability shall in the case of corporations incorporated under the Colorado laws, be fixed by the by-laws, and the rule shall be uniform. Such policies or certificates shall also specify the minimum sum of money to be paid upon each contingency insured against, and the number of days after satisfactory proof of the happening of such contingency at which such payment shall be made; and upon the occurrence of such contingency, unless the contract shall have been voided by fraud or by breach of its conditions, said association shall be obliged to the beneficiary for such payment at the time and to the amount specified in the policy or certificate, and this indebtedness shall be a lien upon all the property, effects and bills receivable of said association, in this state, with priority over all indebtedness thereafter incurred. *Provided*, That the statement of said minimum sum shall not invalidate the right of the party insured from receiving any further amount above such minimum sum that shall be based upon membership and to which he shall be entitled by the provisions of his policy.

(5) Any corporation organized under the authority of any other state or government to issue policies or certificates of casualty insurance on the assessment plan, shall, as a condition precedent to transacting business in this state, pay such fees and comply with the same requirements as exacted of stock casualty insurance companies of other states or countries, as provided by this act and

be thereafter subject to the same general laws and penalties of division one of this act unless herein otherwise provided, and it shall deposit with the commissioner of insurance of Colorado, or with the proper official of some other state, for the protection of all its policyholders, a sum not less than that required to be deposited by domestic casualty insurance companies organized upon the mutual assessment plan; and such corporation shall also file with the commissioner of insurance a copy of its policies or certificates and applications therefor, for approval by the commissioner, and a sworn statement from the proper officers of such corporation that they have received a copy of this section of this act, and shall be governed thereby in issuing policies or certificates in this state. The commissioners may thereupon issue or renew the authority of such corporation to do business in this state.

(6) The money or other benefit, charity, relief or aid to be paid, or provided or rendered by any corporation authorized to do casualty insurance on the assessment plan, shall not be liable to attachment or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of a policy or certificateholder, or any beneficiary named therein.

(7) Any corporation now doing a casualty insurance business in this state, which is incorporated to do business on the assessment plan, may reincorporate under the provisions of this act; *Provided*, That nothing in this act shall be construed as requiring any such corporation to reincorporate; and any such corporation may continue to exercise all rights, powers and privileges conferred by this act, or its articles of incorporation not inconsistent herewith, the same as if incorporated hereunder.

[Division one includes sections 3087-3121.]

Legislation. Sec. 3158. Act 1907 § 71, cited under § 3087.

CITATIONS.

This section cited in holding that the insurance money from a certain policy did not in any event become assets of the insured's estate.—*Rollins v. McHatton*, 16 C. 208, 27 P. 255.

The money from a mutual life policy held not subject to garnishment;—the act of 1887 was constitutional.—*Burton v. Snyder*, 21 C. 293, 40 P. 452, 22 C. 174, 176, 43 P. 1004.

CITATIONS CONTINUED.

Section 2 Act of 1887 (now embodied in paragraph 2 this section) and sec. 1 act of 1903 (now embodied in the first paragraph of sec. 3160) do not exempt mutual benefit associations from the application of the act of 1903 (sec. 3142) as to the defense of suicide.—*Head Camp of Woodmen v. Sloss* (Dec. 1910), 112 P. 49.

The benefits to a wife of a life insurance policy are not subject to the debts of the husband, unless it be to the extent of premiums paid during husband's insolvency.—*Hendrie & Bolthoff Co. v. Platt*, 13 A. 19, 56_P. 210.

3159. Takes effect.

SEC. 73. Every mutual or mutual assessment life, fire or accident company or association now existing under the laws of this state, shall be subject to the provisions of this act, and shall be allowed until Dec. 31, 1907, to comply with the requirements set forth herein.

Legislation. Sec. 3159. Act 1907 § 72, cited under § 3087.

3160. Fraternal and benevolent organizations.

SEC. 74. (1) The provisions of this act shall not be construed so as to prevent any fraternal, religious or benevolent societies which conduct their business as fraternal societies, under the lodge system, or to other organizations which do not employ paid agents in soliciting business, or to those which limit their certificate-holders to a particular order or fraternity, from issuing indemnity to any person, against loss by death, sickness or accident, of any of its members; and such society shall not be held amenable under, or governed by, any of the provisions of any section of this act pertaining to accident, health or life insurance, except as to rendering to the commissioner of insurance an annual statement of the condition of said organizations or societies, and paying the insurance department a fee of five (5) dollars.

(2) Any association having a supreme governing or legislative body, and subordinate lodges or branches by whatever name known, into which members shall be elected and initiated or admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or

branches shall be required to hold regular or stated meetings at least once in each month, and preserve a roll of the officers present, shall be deemed to be operating under the lodge system.

(3) Any benevolent or fraternal society or order, doing business in this state, under the lodge system, and incorporated under the laws of another state, which issues certificates of indemnity against loss by death, accident or sickness of any of its members, shall file a copy of its charter or articles of incorporation as required by section 25, chapter 19, General Statutes.

(4) Every such foreign benevolent or fraternal society or order shall file with the secretary of state a certificate signed by its president or head officer, and its secretary, duly acknowledged, designating an agent or agents and their place of residence in this state, upon whom process may be served.

(5) Suits against such corporation may be instituted at the election of the plaintiff in the county in which he resides, or in the county in which the agent resides.

(6) Any lodge of any such benevolent or fraternal society or order, which has complied with the provisions of this act, may bring an action on any bond running to it or any of its officers, the same as though such lodge had been incorporated under the laws of this state.

(7) The fees of the secretary of state shall be the same as for corporations not organized for pecuniary profit.

(8) It shall be the duty of the presiding officer of any lodge in this state, under any such foreign benevolent or fraternal society or order, to see that the requirements of this act are complied with, and ninety days from its passage shall be allowed for a compliance with its provisions.

(9) Every contract whereby a cash or other benefit is to accrue to a person, or to persons, named or designated therein, upon the death of a person from cause not accidental, shall be deemed a contract of life insurance; and it shall be unlawful for any person, co-partnership, association, organization, society, order, or fraternity, except life insurance companies or bona fide fraternal, religious or benevolent societies, as defined by this act, to

make or issue such contracts of insurance; and it shall likewise be unlawful for any fraternal, religious or benevolent society, order, association or organization which provides a death benefit to make it a condition or provision of any contract or membership certificate issued to it, that the beneficiary is required to patronize any particular undertaking or burial firm, corporation or establishment. Any violation of any of the provisions of this section, by any person or any agent, officer or representative of any co-partnership, organization, association, society or order, shall be a misdemeanor, and for each and every offense shall be punished by a fine not to exceed fifty (50) dollars, or imprisonment in the county jail for not to exceed three months, or by both such fine and imprisonment.

[G. S., Chapter 19, section 25, is section 916.]

Legislation. Sec. 3160. Act 1907 § 73, cited under § 3087.

There was no special statutory regulation of insurance in the old Revised Statutes and only 3 sections in the General Laws:

§§ 226, 1633, 2252.

That benevolent societies should not be considered insurance companies, § 226. § 1633 is § 3108 of the 1908 revision.

Sec. 2252 gave the basis for taxation of insurance companies.

The Act 1907 above printed purports to be a complete revision of the insurance law and seems to have repealed all acts confined specifically to that subject.

The repealing section 74 of the 1907 Act enumerates 17 acts repealed and the book and page where found are as follows:

1. Act 1883 p. 212.
2. Act 1887 p. 284.
3. Act 1887 p. 290.
4. Act 1889 p. 166.
5. Act 1889 p. 195.
6. Act 1893 p. 87.
7. Act 1893 p. 118.
8. Act 1893 p. 296.
9. Act 1895 p. 192.
10. Act 1895 p. 193.
11. Act 1899 p. 317.
12. Act 1899 p. 358.
13. Act 1901 p. 127.
14. Act 1903 p. 256.
15. Act 1903 p. 257.
16. Act 1903 p. 258.
17. Act 1903 p. 260.

The insurance chapter of the G. S. contained only the first Act in the above table; all the other Acts being later than 1883, the year of its publication.

This insurance act was compiled by Mr. E. E. Rittenhouse, then superintendent of insurance on suggestions from the legislation on the subject generally, more particularly that of Massachusetts, but not so directly that it could be said to be drafted on the insurance code of that state.

CITATIONS.

Sec. 1 act 1903 (now embodied in first paragraph of this section) and sec. 2 act 1887 (now embodied in sec. 3158 paragraph 2) did not exempt mutual benefit association from the application of the act of 1903 (sec. 3142) as to the defense of suicide.—*Head Camp of Woodmen v. Sloss* (Dec. 1910), 112 P. 49.

III. FRATERNAL BENEFIT SOCIETIES.

Section.

- 3160-A. Fraternal benefit societies defined.
- 3160-B. Lodge system defined.
- 3160-C. Representative form of government defined.
- 3160-D. Exemptions.
- 3160-E. Benefits.
- 3160-F. Beneficiaries.
- 3160-G. Qualifications for membership.
- 3160-H. Certificate.
- 3160-J. Funds.
- 3160-K. Investments.
- 3160-L. Distribution of funds.
- 3160-M. Organization.
- 3160-N. Powers retained—Reincorporation—Amendments.
- 3160-O. Mergers and transfers.
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- 3160-R. Power of attorney and service of process.
- 3160-S. Place of meeting—Location of office.
- 3160-T. No personal liability.
- 3160-U. Waiver of the provisions of the laws.
- 3160-V. Benefits not attachable.
- 3160-W. Constitution and laws—Amendment.
- 3160-X. Annual reports.
- 3160-Y. Provisions to insure future security.
- 3160-Z. Examination of domestic societies.
- 3160-AA. Application for receiver, etc.
- 3160-BB. Examination of foreign societies.
- 3160-CC. No adverse publications.
- 3160-DD. Revocation of license.
- 3160-EE. Exemption of certain societies.
- 3160-FF. Taxation.
- 3160-GG. Penalties.

3160-A. Fraternal benefit societies defined.

SEC. 75. Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 5 hereof, is hereby declared to be a fraternal benefit society.

Legislation. Sec. 3160-A. Sec. 1 of Act of 1911 S. B. No. 181, entitled:

AN ACT

For the Regulation and Control of Fraternal Benefit Societies. (Approved June 2, 1911.)

The black face headings were incorporated in the original Act.

3160-B. Lodge system defined.

SEC. 76. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

Legislation. Sec. 3160-B. Sec. 2 of Act of 1911, cited under § 3160-A.

3160-C. Representative form of government defined.

SEC. 77. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: *Provided*, That the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; *And, provided, further*, That the meetings of the supreme or governing

body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy.

Legislation. Sec. 3160-C. Sec. 3 of Act of 1911, cited under § 3160-A.

3160-D. Exemptions.

Sec. 78. Except as herein provided, such societies shall be governed by this act and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Legislation. Sec. 3160-D. Sec. 4 of Act of 1911, cited under § 3160-A.

3160-E. Benefits.

Sec. 79. Subsection 1. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age; *Provided*. The period of life at which the payment of benefits for disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; *Provided*. That nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society, shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or com-

pounded annually at a rate not lower than four per cent. per annum; *Provided*, That this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions and to contracts affected by such readjustment.

SUBSECTION 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do so, under a table of mortality not lower than the American experience table and four per cent. interest may grant to its members, extended and paid-up protection or such withdrawal equities as its constitution and laws may provide; *Provided*, That such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

Legislation. Sec. 3160-E. Sec. 5 of Act of 1911, cited under § 3160-A.

3160-F. Beneficiaries.

SEC. 80. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; *Provided*, That if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; *Provided*, That any society may, by its laws, limit the scope of beneficiaries within the above classes.

Legislation. Sec. 3160-F. Sec. 6 of Act of 1911, cited under § 3160-A.

3160-G. Qualifications for membership.

SEC. 81. Any society may admit to beneficial membership

any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician and whose examination has been supervised and approved in accordance with the laws of the society; *Provided*, That any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

Legislation. Sec. 3160-G. Sec. 7 of Act of 1911, cited under § 3160-A.

3160-H. Certificate.

SEC. 82. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

Legislation. Sec. 3160-H. Sec. 8 of Act of 1911, cited under § 3160-A.

3160-J. Funds.

SEC. 83. Subsection 1. Any society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any

apportionment or the surrender of any part thereof, except as provided in subsection 2 of section 5, of this act. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds; *Provided*, That no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent. per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum.

SUBSECTION 2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Legislation. Sec. 3160-J. Sec. 9 of Act of 1911, cited under § 3160-A.

3160-K. Investments.

SEC. 84. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; *Provided*. That any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this act for the investment of funds.

Legislation. Sec. 3160-K. Sec. 10 of Act of 1911, cited under § 3160-A.

3160-L. Distribution of funds.

SEC. 85. Every provision of the laws of the society for payment by members of such society, in whatever form made shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

Legislation. Sec. 3160-L. Sec. 11 of Act of 1911, cited under § 3160-A.

3160-M. Organization.

SEC. 86. Seven or more persons, citizens of the United States and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1st. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

2nd. The purpose for which it is formed—which shall not include more liberal powers than are granted by this act, provided that any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

3rd. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of

five thousand dollars, with sureties approved by the commissioner of insurance, conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this act, and all provisions of law have been complied with, the commissioner of insurance shall so certify and retain and record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner of insurance, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its tables of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the commissioner of insurance, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted

by the national fraternal congress August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum, nor until it shall be shown to the commissioner of insurance by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of insurance to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The commissioner of insurance may make such examinations and require such further information as he deems advisable, upon presentation of satisfactory evidence that the society has complied with all the provisions of law he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner of insurance shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provision of this section shall be valid after one year from its date, or at any such further period, not exceeding one year, as may be authorized by the commissioner of insurance, upon cause shown, unless five hundred applicants herein required have been secured, and the organization has been completed as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced

business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every such society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

Legislation. Sec. 3160-M. Sec. 12 of Act of 1911, cited under § 3160-A.

3160-N. Powers retained—Reincorporation—Amendments.

SEC. 87. Any society now engaged in transacting business in this state may exercise after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, if incorporated: or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its constitution and laws and all such amendments shall be filed with the commissioner of insurance and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws.

Legislation. Sec. 3160-N. Sec. 13 of Act of 1911, cited under § 3160-A.

3160-O. Mergers and transfers.

SEC. 88. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the commissioner of insurance of this state, together with a sworn statement of the financial condition of each

of said societies, by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, the commissioner of insurance shall examine the same, and, if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect and thereupon the said contract of merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the commissioner of insurance.

Leg'slation. Sec. 3160-O. Sec. 14 of Act of 1911, cited under § 3160-A.

3160-P. Annual license.

SEC. 89. Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this act, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April; *Provided, however,* The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner of insurance fifty dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this act.

Legislation. Sec. 3160-P. Sec. 15 of Act of 1911, cited under § 3160-A.

3160-Q. Admission of foreign society.

SEC. 90. No foreign society now transacting business, organized prior to the passage of this act, which is not now author-

ized to transact business in this state, shall transact any business herein without a license from the commissioner of insurance. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer, a power of attorney to the commissioner as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of insurance of this state; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments, by persons holding similar contracts, and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April, and such license shall, upon compliance of the provisions with this act, be renewed annually, but in all cases to terminate on the first day of the succeeding April; *Provided, however,* That license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this act and have its assets invested as required by the laws of the state, territory, district, country, or province where it is organized. For each such license or renewal the society shall pay the commissioner fifty dollars. When the commissioner refuses to license any society, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper pro-

ceedings in any court of competent jurisdiction within the state; *Provided, however,* That nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

Legislation. Sec. 3160-Q. Sec. 16 of Act of 1911, cited under § 3160-A.

3160-R. Power of attorney and service of process.

SEC. 91. Every society whether domestic or foreign, now transacting business in this state shall, within thirty days after the passage of this act, and every such society hereafter applying for admission, shall, before being licensed, appoint in writing the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner of insurance or in his absence upon the person in charge of his office and shall be deemed sufficient service upon such society; *Provided, however,* That no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner of insurance he shall forthwith forward by registered mail one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein.

Legislation. Sec. 3160-R. Sec. 17 of Act of 1911, cited under § 3160-A.

3160-S. Place of meeting—Location of office.

SEC. 92. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state.

Legislation. Sec. 3160-S. Sec. 18 of Act of 1911, cited under § 3160-A.

3160-T. No personal liability.

SEC. 93. Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

Legislation. Sec. 3160-T. Sec. 19 of Act of 1911, cited under § 3160-A.

3160-U. Waiver of the provisions of the laws.

SEC. 94. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power of authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members.

Legislation. Sec. 3160-U. Sec. 20 of Act of 1911, cited under § 3160-A.

3160-V. Benefits not attachable.

SEC. 95. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment.

Legislation. Sec. 3160-V. Sec. 21 of Act of 1911, cited under § 3160-A.

3160-W. Constitution and laws—Amendment.

SEC. 96. Every society transacting business under this act shall file with the commissioner of insurance a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

Legislation. Sec. 3160-W. Sec. 22 of Act of 1911, cited under § 3160-A.

3160-X. Annual reports.

SEC. 97. Every society transacting business in this state shall annually on or before the first day of March, file with the commissioner of insurance, in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required, each society shall annually report to the commissioner a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses, provided the first report of valuation shall be made as of December 31st, 1912. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided and

said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress August 23, 1899, or, at the option of the society, any higher table, or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; *Provided*. That where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience and in such case a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

Beginning with the year 1914 a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year, or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of

the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum.

Legislation. Sec. 3160-X. Sec. 23 of Act of 1911, cited under § 3160-A.

3160-Y. Provisions to insure future security.

Sec. 98. If the valuation of the certificates, as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than ninety per centum of the present value of the promised benefits and accrued liabilities, such society shall be required thereafter to reduce such deficiency not less than five per centum of the total deficiency on said December 31, 1917, at each succeeding triennial valuation. If at any succeeding triennial valuation such society does not show such percentage of improvement, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has not made the percentage of improvement required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provision of section 24 of this act, or, in the case of a foreign society, he may cancel its license to transact business in this state.

Any such society; shown by any triennial valuation, subsequent to December 31, 1917, not to have made the improvement herein required shall, within one year thereafter, complete such deficient improvement, or thereafter, as to all new members admitted, be subject, so far as stated rates of contribution are concerned, to the provisions of section 12 of this act, applicable in the organization of new societies; *Provided*. That the contributions and funds of such new members shall be kept separate and apart from the other funds of the society until the required im-

provement shall be shown by valuation. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds.

Legislation. Sec. 3160-Y. Sec. 23-A of Act of 1911, cited under § 3160-A.

3160-Z. Examination of domestic societies.

SEC. 99. The commissioner of insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents and employes or other persons in relation to the affairs, transactions and condition of the society.

The expense of such examination shall be paid by the society examined, upon statement furnished by the commissioner of insurance, and the examination shall be made at least once in three years.

Whenever after examination the commissioner of insurance is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, (or shall determine to discontinue business), the commissioner of insurance may present the facts relating thereto to the attorney general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society and shall forthwith, under the direction of the court,

proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

Legislation. Sec. 3160-Z. Sec. 24 of Act of 1911, cited under § 3160-A.

3160-AA. Application for receiver, etc.

SEC. 100. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney general.

Legislation. Sec. 3160-AA. Sec. 25 of Act of 1911, cited under § 3160-A.

3160-BB. Examination of foreign societies.

SEC. 101. The commissioner of insurance, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employes and other persons in relation to the affairs, transactions and condition of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the commissioner of insurance.

If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until a satisfactory evidence is furnished the commissioner relating to the condition

and affairs of the society, and during such suspension the society shall not write new business in this state.

Legislation. Sec. 3160-BB. Sec. 26 of Act of 1911, cited under § 3160-A.

3160-CC. No adverse publications.

SEC. 102. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the commissioner of insurance shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

Legislation. Sec. 3160-CC. Sec. 27 of Act of 1911, cited under § 3160-A.

3160-DD. Revocation of license.

SEC. 103. When the commissioner of insurance on investigation is satisfied that any foreign society transacting business under this act has exceeded its powers, or has failed to comply with any provisions of this act or is conducting business fraudulently, or is not carrying out its contracts in good faith he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state shall not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in section 16 of this act.

Legislation. Sec. 3160-DD. Sec. 28 of Act of 1911, cited under § 3160-A.

3160-EE. Exemption of certain societies.

SEC. 104. Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the Supreme Lodge Knights of Pythias), and the Junior Order of United American Mechanics (exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United American Mechanics) or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state. nor to domestic societies which limit their membership to the employes of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year; *Provided, always,* That any such domestic order or society which has more than five hundred members, and provides for death or disability benefits, and any such domestic lodge, order or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this act. The commissioner of insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this act.

No society, which is exempt by the provisions of this section from the requirements of this act shall give or allow or promise to give or allow, to any person any compensation for procuring new members.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in sections 1, 2, and 3, of this act, providing for benefits in case of

death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this act, and shall have all the privileges and shall be subject to all the provisions and regulations of this act, except that the provisions of this act requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

Legislation. Sec. 3160-EE. Sec. 29 of Act of 1911, cited under § 3160-A.

3160-FF. Taxation.

SEC. 105. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

Legislation. Sec. 3160-FF. Sec. 30 of Act of 1911, cited under § 3160-A.

3160-GG. Penalties.

SEC. 106. Any person, officer, member or examining physician of any society authorized to do business under this act who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as

provided by the statutes of this states in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent or employe thereof neglecting or refusing to comply with, or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

Legislation. Sec. 3160-GG. Sec. 31 of Act of 1911, cited under § 3160-A.

CHAPTER LXXI.

INTEREST.

Section.

3161. Legal rate of interest 8 per cent. per annum.

3162. Creditors allowed 8 per cent. per annum.

3163. Greater rate may be stipulated.

3164. County, city and school warrants bear 6 per cent.

3161. Legal rate of interest 8 per cent. per annum.

SECTION 1. The legal rate of interest on the forbearance or loan of any money when there is no agreement between the parties, as specified in section three of this act, shall be at the rate of eight per centum per annum.

[Section 3 referred to is section 3163.]

Legislation. Sec. 3161. Act 1889 p. 206 § 1, entitled:

AN ACT

Regulating Rates of Interest and Repealing Certain Acts in Conflict Herewith.

CITATIONS.

Upon a thirty day note "with ten per cent interest per month" legal rate allowed after maturity.—*Clark v. Russell*, 1 C. 52.

If no agreement is made respecting interest the rate is the legal rate.—*Browne v. Steck*, 2 C. 77, *Neuman v. Dreirfurst*, 9 C. 232, 11 P. 100. *Cheyenne County v. Bent County*, 15 C. 329, 25 P. 511. *Salazar v. Taylor*, 18 C. 543, 33 P. 371.

A party may contract for whatever rate of interest he chooses provided such interest be intended as compensation.—*Buckingham v. Orr*, 6 C. 591.

Interest may be recovered on a foreign judgment.—*Bruckman v. Taussig*, 7 C. 561, 5 P. 152.

Interest not allowed on damages to property arising from negligence or upon an unliquidated demand.—*D. S. P. & P. R. Co. v. Conway*, 8 C. 16, 5 P. 142. *D. S. P. & P. R. Co. v. Moynahan*, 8 C. 56, 5 P. 811. *Deater v. Collins*, 21 C. 459, 42 P. 666. *Greeley etc. Ry. Co. v. Yount*, 7 A. 192, 42 P. 1024.

3162. Creditors allowed 8 per cent. per annum.

SEC. 2. Creditors shall be allowed to receive interest when there is no agreement as to the rate thereof, at the rate of eight per centum per annum, for all moneys after they become due, on any bond, bill, promissory note or other instrument of writing, or on any judgment recovered before any court or magistrate authorized to enter up the same within this state, from the day of entering up said judgment until satisfaction thereof be made; * also, on money due on mutual settlement of accounts from the date of such settlement, on money due on account from the date when the same became due, and on money received to the use of another and retained without the owner's knowledge.

[Does the above section supersede section 3624 as to rate of interest on judgments?]

[Interest on lands sold under execution. Section 3652.]

Legislation. Sec. 3162. Act 1889 § 2, cited under § 3161. See notes to § 3163.

As to the query of the official note: the text evidently supersedes § 3624.

CITATIONS.

Interest is not recoverable upon a verdict.—*Hawley v. Barker*, 5 C. 119.

Independent of statute a court of equity may impose interest in cases of fraudulent conduct.—*Filmore v. Reithman*, 6 C. 120.

Compound interest is not allowed under the statute.—*Denver B. & M. Co. v. McAllister*, 6 C. 268.

CITATIONS CONTINUED.

G. S. sec. 1707 allowed interest "on money held by any unreasonable and vexatious delay."—*Craig v. Chandler*, 6 C. 548. *Corson v. Neatheny*, 9 C. 215, 11 P. 84.

Interest is recoverable only in the cases provided for by the statute.—*Corson v. Neatheny*, 9 C. 215, 11 P. 84. *De Remer v. Parker*, 19 C. 242, 34 P. 980. *Young v. Kimber*, 44 C. 453, 98 P. 1134. *Pettit v. Thalheimer*, 3 A. 358, 33 P. 277.

On settlement of accounts interest is chargeable from date of last item.—*Bergundthal v. Bailey*, 15 C. 259, 25 P. 87.

The legislature could not alter the rate of interest upon a pre-existing judgment.—*Butler v. Rockwell*, 17 C. 295, 29 P. 458. A judgment for costs draws interest.—*Bates v. Wilson*, 18 C. 287, 32 P. 615.

This section does not change the ten per cent rate of interest to be paid by redeeming judgment creditors under sec. 3652.—*O'Mahoney v. Peo.*, 24 C. 526, 52 P. 796.

Interest is not allowable upon a balance due for work.—*Hurbutt v. Dusenbery*, 26 C. 248, 57 P. 862.

On sale by one partner to another, unpaid balance of purchase price draws interest from date of transaction.—*Cobb v. Benedict*, 27 C. 348, 62 P. 224.

Money in hands of county treasurer not turned over to his successor draws interest.—*Gariley v. Peo.*, 28 C. 229, 64 P. 209.

Interest may be recovered on overdue coupons on county and municipal bonds.—*Lake County v. Linn*, 29 C. 459, 466, 68 P. 844. *Cripple Creek v. Adams*, 36 C. 328, 85 P. 187.

Interest allowed on an account for goods sold, from the time it became due.—*Florence & C. C. R. Co. v. Tennant*, 32 C. 76, 75 P. 411.

Interest allowed where one party agreed to pay another party, if a certain sum was not paid by a third party within a specified time.—*Doyle v. Nesting*, 37 C. 526, 88 P. 863.

No interest allowable upon demands due from a county, previous to issuance of warrants.—*Montezuma County v. Wheeler*, 39 C. 213, 89 P. 52.

Where it was shown that according to custom payment for goods sold became due on the first day of the succeeding month, such date fixed the time from which interest can be computed.—*Florence O. & R. Co. v. McRae*, 40 C. 304, 90 P. 507.

Agent detaining money not liable for interest unless detention was without principals consent—want of consent must be pleaded.—*Young v. Kimber*, 44 C. 453, 98 P. 1134.

The claim of a broker for finding a lessee of property was within the term "account" and he was entitled to interest.—*Donley v. Bailey*, 48 C. 373, 110 P. 68.

Where, by contract bills are payable on the 15th of each month, interest is due on default; but where principal is ac-

CITATIONS CONTINUED.

cepted such interest can not be recovered.—*Bassick G. M. Co. v. Beardsley* (Jan. 1911), 112 P. 771.

One who misappropriates funds is liable for interest from date of misappropriation.—*Brown v. First Nat. Bank* (Jan. 1911). 113 P. 483.

No interest allowed upon damages resulting from the wrongful taking of property.—*Greeley etc. R. Co. v. Yount*, 7 A. 192, 42 P. 1024. Nor upon bank deposits subject to draft. *Patten v. Am. Nat. Bank*, 15 A. 481, 63 P. 424.

A written certificate of indebtedness draws interest.—*Midland Fuel Co. v. Schuessler*, 18 A. 389, 71 P. 894.

3163. Greater rate may be stipulated.

SEC. 3. The parties to any bond, bill, promissory note, or other instrument of writing, may stipulate therein for the payment of a greater or higher rate of interest than eight per centum per annum, and any such stipulation may be enforced in any court of competent jurisdiction in the state.

Legislation. Sec. 3163. Act 1889 § 3, cited under § 3161.

Sec. 5 same Act repealed G. S. §§ 1706-1708. The three sections repealed read "ten per cent" where the text reads "eight per cent." There is no other substantial change except that § 1707 replaced by § 3163 read, after the star: "likewise on money lent, on money due on the settlement of account from the date of the last just entry that may have been made in account, on money received to the use of another and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay."

The G. S. sections were a reprint of G. L. §§ 1366-1368, which were a substituting Act of 1877 but read the same as R. S. p. 362 §§ 1-3, except that G. L. § 1367 contained the words: "From the date of the last just entry that may have been made in account" instead of "From the day of liquidating accounts between the parties and ascertaining the balance due" which was the wording of R. S. p. 362 § 2. The R. S. sections were a reprint of Act 1861 p. 45.

CITATIONS.

An allowance for the failure to pay at maturity money due on a contract is regarded as damages for the breach of the contract not as interest on the money due.—*Browne v. Steck*, 2 C. 77.

Proper computation of interest on a note bearing 2 per cent per month without any fixed time for payment of interest.—*Beckwith v. Beckwith*, 11 C. 571, 19 P. 511.

Compound interest contracted for in advance is in general not recoverable. The rule might, however, not be applied where the promise to pay compound interest is made after interest has accrued.—*Hochmark v. Richler*, 16 C. 264, 26 P. 819.

CITATIONS CONTINUED.

A contract to pay a higher rate on interest if note is not paid at maturity is enforceable.—*McKay v. Bank*, 27 C. 54, 59 P. 747.

The legislature may provide that interest shall be a matter of contract. The agreement turning interest after maturity into principal bearing interest is not compounding interest.—*Wigton v. Elliott* (Nov. 1910), 111 P. 714.

3164. County, city and school warrants bear six per cent.

SEC. 4. County orders and warrants, town and city and school orders and warrants, and other like evidences or certificates of municipal indebtedness, shall bear interest at the rate of six per centum per annum from the date of the presentation thereof for payment at the treasury where the same may be payable, until there is money in the treasury for the payment thereof, except when otherwise specially provided by law, and every county treasurer, town treasurer and city treasurer to whom any such county, town city or school order or warrant is presented for payment, and who shall not have on hand the funds to pay the same, shall endorse thereon the rate of interest said order or warrant will draw, and the date of such presentation, and subscribe such endorsement with his official signature; *Provided*, That, all such orders and warrants may be made to bear a lower rate of interest than above specified, by special agreement between such counties, towns and cities issuing the same, and the person to whom such orders or warrants are issued.

[For rate of interest chargeable by Trust Companies see section 305.]

[For rate of interest chargeable by pawnbrokers, see section 4811.]

[For rate chargeable by wage brokers see section 7005.]

Legislation. Sec. 3164. Act 1899 p. 238, amending Act 1889 p. 206 § 4. The amendment consisted in the interpolation of "School orders," in changing the rate from 8 to 6 per cent and in the addition of the proviso. The 1889 Act was a substitute for Act 1879 p. 93 § 2, G. S. § 1709, which amended Act of 1877 G. L. § 1369, which amended R. S. p. 362 § 4. Act 1861 p. 52 § 8.

CITATIONS.

This section cited in an action upon county warrants.—*Forbes v. Grand County*, 23 C. 348, 47 P. 390.

Interest may be recovered on overdue coupons on county bonds.—*Lake County v. Linn*, 29 C. 460, 68 P. 843.

No interest is allowable upon demands due from a county, previous to issuance of warrants.—*Montezuma County v. Wheeler*, 39 C. 213, 89 P. 52.

CHAPTER LXXII.

IRRIGATION.

- I. RIGHT OF WAY—APPROPRIATION—USE OF WATER.—3165-3232.
- II. DUTIES OF OWNERS.—3233-3261.
- III. RATE OF CHARGE FOR WATER.—3262-3275.
- IV. ADJUDICATION OF PRIORITIES.—3276-3320.
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- VI. IRRIGATION DIVISIONS—DIVISION ENGINEERS.—3335-3352.
- VII. WATER DISTRICTS—WATER COMMISSIONERS.—3353-3439.
- VIII. IRRIGATION DISTRICTS.—3440-3494.
- VIII-A. DRAINAGE DISTRICTS.—3494-H.-3494-O3.
- IX. OFFENSES.—3495-3498.
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3165. Owners of land on streams entitled to use of water.

SECTION 1. All persons who claim, own or hold a possessory right or title to any land or parcel of land within the boundary of the state of Colorado, as defined in the constitution of said state, when those claims are on the bank, margin or neighborhood of any stream of water, creek or river, shall be entitled to the use of the water of said stream, creek or river for the purposes of irrigation, and making said claims available to the full extent of the soil, for agricultural purposes.

[Water rights conveyed as real estate, section 669.]

[When ditch exempt from taxation, sections 5545 and 5546.]

[Mechanic's lien attaches to water rights. Section 4031.]

Legislation. Sec. 3165. Act 1861 p. 67 § 1. R. S. p. 363 § 1. G. L. § 1372. G. S. § 1711.

This is the first section of the original Act of 1861, and it has never been amended. Nearly all the provisions of that Act remain in force, with but little change, but its section 4, printed as R. S. § 3166, allowing the division of water by use on alternate days, was repealed without substitution by Act of 1911.

The revision of 1868 contained only the 1861 Act and a few sections from Act of 1867 p. 62, requiring ditches to be bridged.

The G. L. revision of 1877 contained the same sections as were found in the R. S. Chapter, with the addition of an Act of 1872, exempting ditches from taxation, and an Act of 1876 concerning waste water.

There was no attempt to legislate in detail upon the subject until 1879, when the division of the state into water districts was made and suits were required to be brought to determine all priorities. The provisions of that Act as to the conduct of such so-called priority suits were amended by Act of 1881, and from 1879 at every session the matter has been legislated upon until the Statutes assume the form of a code, complicated in detail, but fairly to be understood upon careful analysis.

The arrangement of these statutes by the commissioners in the 1908 revision is perhaps as systematic as was possible.

Water was originally appropriated by the mere fact of digging the ditch and tapping the stream, generally followed by record with the county clerk, but such record was not essential. The record now required is with the state engineer.

The priority suits have adjudicated a mass of claims, but the integral lesion of these Acts was that being in certain respects *ex parte*, that is to say: the water itself not being represented by any party, the distribution of priorities was not limited to the capacity of the stream, and parties have been adjudged owners of much greater quantities of water than the stream itself was able to supply.

Certain sections of the 1879 Act (now secs. 3202-3203) gave the right to take "any unappropriated water not needed for immediate use." This at once suggests the contest that would arise to determine the point of difference between the present user and the party who purported merely to stow the water that was about to leave the land without an owner or use to such water. More reservoir sections have been added at almost every session.

The water districts above mentioned are now seventy in number, and each such district is superintended by a bonded officer styled a water commissioner, paid by the county, who is required to devote his entire time, if necessary, to have charge of the ditches, headgates and reservoirs, and to let on and shut off the water so as to distribute it to the parties entitled, according to the adjudication of their priorities.

An irrigation district is not merely a geographical division like a water district, but a body corporate formed for the purpose of raising money by bond issue when authorized by election, to be used in the purchase or condemnation of rights of way and to appropriate or purchase water rights for the benefit of the land owners of the district.

Under the Constitution, Art. XVI., Sec. 5, the unappropriated waters of natural streams are declared to be the property of the public, subject to appropriation, and the law of appropriation, which is wholly inconsistent with the common law of riparian rights, has been the law of Colorado ever since its first settlement. By Sec. 6 the use of water for domestic purposes is given preference over claims for any other purpose, and irrigation is given preference over manufacturing purposes.

The appropriation of water by irrigation ditches began in this state by the Mexican settlers as it began in California under the missions, but the earliest adjudications allowing the right to divert the water without returning it to the natural bed were made in the California cases in disputes between parties who had diverted it for placer mining purposes.

This right to divert and not return, now recognized everywhere on the Pacific slope and as far east as Kansas and Nebraska, is the reverse of the phrase "Riparian rights," which is the common law of England and of the eastern states.

Where the land is served with water by stock companies the county commissioners fix the rates to be charged for the same, but the delivery of such water is under the same supervision as water owned by individuals.

The state is also divided into five irrigation divisions (§ 3335), to each of which is assigned a division engineer, holding for a term of four years, and their offices are fixed at Denver, Pueblo, Alamosa, Montrose and Glenwood Springs. These officers take the place of those who were formerly styled superintendents of irrigation, and have general control of the water commissioners, and are themselves under control of the state engineer.

An Act of 1903 provided for priority suits to settle the rights of claimants of water rights for purposes other than irrigation which would mean for mining and power purposes, § 3280.

An Act of 1909 provided for the organization of drainage districts, which, before it had gone into practical operation, was superseded by Act of 1911.

The canals projected by the state have not brought any land under irrigation. State Canal No. 1 and State Canal No. 2, the latter known as the Mesa County Ditch, have never been completed, and Canal No. 3 was turned over to the United States and is now known as the Gunnison Tunnel Project.

CITATIONS.

The right to water is not in any way dependent upon the locus of its application.—*Coffin v. Left Hand Ditch Co.*, 6 C. 450. *Thomas v. Guiraud*, 6 C. 530.

To acquire the right to water one must, within a reasonable time, employ the same in the district from which it was taken.—*Sieber v. Frink*, 7 C. 148, 2 P. 901.

The water of every natural stream in this state is the property of the public.—*Fort Morgan L. & C. Co. v. South Platte D. Co.*, 18 C. 1, 30 P. 1032.

The early territorial acts referred to in an action to adjudicate rights for use of water out of state.—*Lamson v. Vailes*, 27 C. 204, 61 P. 232.

This act does not purport to vest title to water in a stream in the owner of lands thereon, but its object was to secure to such owner the right to divert water for the purpose of irrigation.—*Crippen v. White*, 28 C. 300, 64 P. 184.

This and section 3167 have no application to a proceeding to condemn a ditch to carry waste water from the end of the ditch on another's land.—*Schneider v. Schneider*, 36 C. 521, 86 P. 348.

The doctrine of the common law that a landowner is entitled to have the waters flow continuously in their natural course rejected.—*Sternberger v. Seaton M. Co.*, 45 C. 401, 102 P. 168.

This section cited in an action for damages for the pollution

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of the waters of a stream.—*Humphreys T. & M. Co. v. Frank*, 46 C. 528, 105 P. 1095.

The territorial acts referred to in holding that domestic use has no preference over an irrigation appropriation vested before the constitution.—*Armstrong v. Larimer County D. Co.*, 1 A. 57, 27 P. 237.

Under the constitution and laws the right to the use of water for irrigation is dependent upon its diversion and actual and continuous appropriation to such beneficial use, and then only to such extent as is necessary for the use intended.—*Church v. Stillwell*, 12 A. 48, 54 P. 395.

3166. (Repealed.)

Legislation. Sec. 3166. Repealed by Sec. 1 of Act of 1911, S. B. No. 103 approved June 2 without substitution. It was the Act of 1870 p. 158 § 1 G. L. § 1375, G. S. § 1714 allowing distribution of water on alternate days. It was originally Sec. 4 of Act of 1861 p. 68. Amended by Act of 1866 p. 64. R. S. p. 363 § 4.

3167. Right of way through other lands.

SEC. 3. When any person owning claims in such locality has not sufficient length of area exposed to said stream to obtain a sufficient fall of water to irrigate his land, or that his farm, or land used by him for agricultural purposes, is too far removed from said stream, and that he has no water facilities on those lands, he shall be entitled to a right of way through the farms or tracts of lands which lie between him and said stream, or the farms or tracts of land which lie above and below him on said stream, for the purposes hereinbefore stated.

Legislation. Sec. 3167. Act 1861 p. 67 § 2. R. S. p. 363 § 2. G. L. § 1373. G. S. § 1712.

CITATIONS.

A right to convey water over the land of another may be acquired under this section and such right needs not a grant from the owner.—*Yunker v. Nichols*, 1 C. 554. *Tripp v. Overocker*, 7 C. 73, 1 P. 696.

Prior to the act of 1881 (sec. 3170) any number of ditches could be taken across another's land.—*Downing v. More*, 12 C. 319, 20 P. 768. *Durango Ditch Co. v. Durango*, 21 C. 196, 40 P. 356.

A private individual may not maintain a condemnation suit

CITATIONS CONTINUED.

for a right of way for the benefit of himself and others similarly situated.—*Ortiz v. Hansen*, 35 C. 102, 83 P. 964.

This and section 3165 have no application to a proceeding to condemn a ditch to carry waste water from the end of a ditch on another's land.—*Schneider v. Schneider*, 36 C. 521, 86 P. 348.

After entry under a license and construction of the ditch the license operates as an irrevocable grant.—*De Graffenried v. Savage*, 9 A. 134, 47 P. 903.

3168. Extent of right of way.

SEC. 4. Such right of way shall extend only to a ditch, dyke or cutting, sufficient for the purpose required.

Legislation. Sec. 3168. Act 1861 p. 67 § 3. R. S. p. 363 § 3. G. L. § 1374. G. S. § 1713.

CITATIONS.

This section cited in holding that a right of way could be acquired under sec. 3170 upon payment of just compensation.—*Tripp v. Overocker*, 7 C. 73, 1 P. 696.

3169. Condemnation of right of way.

SEC. 5. Upon the refusal of the owners of tracts of land or lands through which said ditch is proposed to run, to allow of its passage through their property, the person or persons desiring to open such ditch may proceed to condemn and take the right of way therefor (under the provisions of chapter thirty-one of these laws concerning eminent domain).

[Chapter 31 above referred to is found in its amended form between sections 2415 and 2434.]

Legislation. Sec. 3169. G. L. § 1376. G. S. § 1715. R. S. p. 364 § 5. Under the Act of 1861 p. 68 §§ 5-7, 9, the damages were assessed by selected viewers.

CITATIONS.

This section cited in holding that one who objected to such testimony, could not complain that proof was not made of the owner's refusal.—*Warner v. Gunnison*, 2 A. 435, 31 P. 238.

Where a ditch was constructed under license and operated for two years the license operated as an irrevocable grant.—*De Graffenried v. Savage*, 9 A. 134, 47 P. 903.

This section cited in an action concerning the right to use an abandoned river bed for conveying water.—*Bogliano v. Giorgetta*, 20 A. 344, 78 P. 614.

3170. No land burdened with more than one ditch, except.

SEC. 6. That no tract or parcel of improved or occupied land in this state, shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property, to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch.

Legislation. Sec. 3170. G. S. § 1716. Act 1881 p. 164 § 1, entitled:

AN ACT

Relating to Irrigating Ditches and Manner of Their Construction.

CITATIONS.

This section cited in construing the constitutionality of sec. 3172.—*Tripp v. Overocker*, 7 C. 72, 1 P. 696.

The right to enlarge a ditch applies only to such ditches as have been constructed through the land and not to those constructed by the owner for his own land exclusively.—*Downing v. More*, 12 C. 318, 20 P. 768.

An irrigating ditch owned by a company is within the statute. The question of necessity or feasibility must be tried by the commissioners.—*Sand Creek L. I. Co. v. Davis*, 17 C. 329, 333, 29 P. 745.

Two or more persons may divert water through the same headgate without merger of their priorities.—*Nichols v. McIntosh*, 19 C. 24, 34 P. 279.

Ditches subject to enlargement and joint use under this section are strictly private ditches.—*Durango Ditch Co. v. Durango*, 21 C. 194, 40 P. 356.

This section referred to upon the question of feasibility and practicability.—*U. P. R. R. Co. v. Colo. Postal T. Co.*, 30 C. 139, 69 P. 566.

The provisions of this section are for the benefit of the land owner and cannot be invoked by rival ditch companies.—*San Luis Land etc. Co. v. Kenilworth Canal Co.*, 3 A. 247, 32 P. 862.

3171. Shortest route must be taken.

SEC. 7. Whenever any person or persons find it necessary to convey water for the purpose of irrigation through the improved

or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable, upon which said ditch can be constructed with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and used upon land or lands of the person or persons constructing such ditch.

Legislation. Sec. 3171. G. S. § 1717. Act 1881 § 2, cited under § 3170.

CITATIONS.

The right to enlarge a ditch does not apply to those constructed by the owner of the land.—*Downing v. More*, 12 C. 317, 20 P. 768.

The question of necessity or feasibility should be determined by commissioners. It may be waived.—*Sand Creek L. I. Co. v. Davis*, 17 C. 329, 333, 29 P. 743.

A city can not acquire a right to enlarge and use a ditch used for carriage of water for hire.—*Durango Ditch Co. v. Durango*, 21 C. 196, 40 P. 356.

This section cited upon the question of feasibility and practicability.—*U. P. R. R. v. Colo. Postal T. Co.*, 30 C. 139, 69 P. 566.

This and section 3170 and 3172 are for the benefit of the land owner and cannot be invoked by rival ditch companies.—*San Luis L. etc. Co. v. Kenilworth C. Co.*, 3 A. 247, 32 P. 862.

3172. Owner of ditch must permit others to enlarge.

Sec. 8. No person or persons having constructed a private ditch for the purposes and in the manner hereinbefore provided, shall prohibit or prevent any other person or persons from enlarging or using any ditch by him or them constructed in common with him or them, upon payment to him or them of a reasonable proportion of the cost of construction of said ditch.

Legislation. Sec. 3172. G. S. § 1718. Act 1881 § 3, cited under § 3170.

CITATIONS.

In so far as this section undertakes to limit the compensation, it is unconstitutional.—*Tripp v. Overocker*, 7 C. 73, 1 P. 696.

The right to enlarge a ditch applies to ditches through the land and not to those of the owner for use on his land.—*Downing v. More*, 12 C. 318, 20 P. 768. *Durango D. Co. v. Durango*, 21 C. 196, 40 P. 356.

CITATIONS CONTINUED.

The whole act of 1881 must be construed in determining the meaning of the term "private ditches" as used in this section.—*Sand Creek L. I. Co. v. Davis*, 17 C. 329, 29 P. 743.

The right of one ditch to tap another might be acquired by condemnation, or by contract.—*Water S. & S. Co. v. Larimer & W. I. Co.*, 24 C. 343, 51 P. 504.

The provisions of this and secs. 3170 and 3171 can not be invoked by rival ditch companies.—*San Luis etc. Co. v. Canal Co.*, 3 A. 247, 32 P. 862.

3173. When head of ditch may be extended up stream—Condemnation.

SEC. 9. In case the channel of any natural stream shall become so cut out, lowered, turned aside or otherwise changed from any cause, as to prevent any ditch, canal or feeder of any reservoir from receiving the proper inflow of water to which it may be entitled from such natural stream, the owner or owners of such ditch, canal or feeder shall have the right to extend the head of such ditch, canal or feeder to such distance up the stream which supplies the same as may be necessary for securing a sufficient flow of water into the same, and for that purpose shall have the same right to maintain proceedings for condemnation of right of way for such extension as in case of constructing a new ditch, and the priority of right to take water from such stream, through such ditch, canal or feeder as to any such ditch, canal or feeder shall remain unaffected in any respect by reason of such extension: *Provided, however*, That no such extension shall interfere with the complete use or enjoyment of any ditch, canal or feeder.

[For right of condemnation for new ditch see section 3169.]

Legislation. Sec. 3173. G. S. § 1719 Act 1881 p. 161 § 1, entitled:

AN ACT

To Provide for the Extension of the Right of Way for Ditches, Canals and Feeder [Feeders] of Reservoirs in Certain Cases, and Requiring Registration of All Such Hereafter Made or Enlarged.

CITATIONS.

Prior to this section one had a right to remove obstructions, in the stream above the ditch, which changed the course of the current.—*Crisman v. Heiderer*, 5 C. 596.

CITATIONS CONTINUED.

This section cited in holding sec. 2 of the act of 1881 (now sec. 3181) unconstitutional.—*Lamar Canal Co. v. Amity L. & I. Co.*, 26 C. 370, 374, 58 P. 600.

3174. Only irrigation ditches referred to in the last above section.

SEC. 10. This act shall apply to and effect only ditches, canals or feeders used for carrying water for the purpose of irrigation, and for no other purpose whatever.

Legislation. Sec. 3174. G. S. § 1721 Act 1881 § 3, cited under § 3173. "This Act" refers to the three sections of said Act of 1881, including § 3173, the text, and § 2, which was declared unconstitutional, as noted in legislation to § 3187.

3175. Water to be pro rated among consumers.

SEC. 11. If at any time any ditch or reservoir from which water is or shall be drawn for irrigation shall not be entitled to a full supply of water from the natural stream which supplies the same, the water actually received into and carried by such ditch, or held in such reservoir, shall be divided among all the consumers of water from such ditch or reservoir, as well as the owners, shareholders or stockholders thereof, as the parties purchasing water therefrom, and parties taking water partly under and by virtue of holding shares, and partly by purchasing the same, to each his share pro rata, according to the amount he, she or they (in cases in which several consume water jointly) shall be then entitled, so that all owners and purchasers shall suffer from the deficiency arising from the cause aforesaid each in proportion to the amount of water to which he, she or they should have received in case no such deficiency of water had occurred.

Legislation. Sec. 3175. G. S. § 1722 Act 1879 p. 97 § 4, entitled:

AN ACT

To Regulate the Use of Water for Irrigation, and Providing for Settling the Priority of Right Thereto, and for Payment of the Expenses Thereof, and for Payment of All Costs and Expenses Incident to Said Regulation of Use.

CITATIONS.

The act of 1861 as to prorating by commissioners cited.—*Coffin v. Left Hand D. Co.*, 6 C. 448.

As to consumers taking water from the same carrier this statute is constitutional.—Rights of such consumers.—*Farmers' High Line etc. Co. v. Southworth*, 13 C. 113, 129, 135, 21 P. 1028. The statute is limited in its operation.—*Nichols v. McIntosh*, 19 C. 26, 34 P. 280.

The most favorable view that can be taken of the statute is that in times of scarcity of water it may be resorted to, to compel the prorating of water among consumers having priorities of nearly the same date.—*Larimer & W. I. Co. v. Wyatt*, 23 C. 491, 48 P. 528.

Action by users under original construction of ditch, to enjoin prorating with users under subsequent enlargement.—*Brown v. Farmers' High Line Co.*, 26 C. 66, 56 P. 183.

When consumers having earlier priorities may not be compelled to prorate with consumers having later priorities. It is stare decisis that there may be circumstances in which consumers from same ditch may not be compelled to pro-rate.—*Farmers' High Line Co. v. White*, 32 C. 114, 75 P. 415.

3176. Irrigation of meadows—Right to make ditch—Priority.

SEC. 12. All persons who shall have enjoyed the use of the water in any natural stream for the irrigation of any meadow land, by the natural overflow or operation of the water of such stream, shall, in case the diminishing of the water supplied by such stream, from any cause, prevent such irrigation therefrom in as ample a manner as formerly, have right to construct a ditch for the irrigation of such meadow, and to take water from such stream therefor, and his or their right to water through such ditch shall have the same priority as though such ditch had been constructed at the time he, she or they first occupied and used such land as meadow ground.

Legislation. Sec. 3176. G. S. § 1723 Act 1879 § 37, cited under § 3175.

CITATIONS.

In an action under this section the contention concerning a former decree not considered for want of proper record.—*Means v. Gotthelf*, 31 C. 168, 71 P. 1117. *Means v. Stow*, 31 C. 283, 73 P. 48.

A complaint construed to come within this section in an ac-

CITATIONS CONTINUED.

tion to prevent the pollution of a stream by a mill owner.—*Humphrey's T. & M. Co. v. Frank*, 46 C. 528, 105 P. 1095.

Where a decree has been entered adjudicating priorities one afterwards claiming under this section is barred by sec. 3313 in the same manner as other claimants.—*Broad Run Co. v. Deuel & Snyder Co.*, 47 C. 575, 583, 108 P. 756.

3177. Priority of right to seepage or spring water.

SEC. 13. That all ditches now constructed or hereafter to be constructed for the purpose of utilizing the waste, seepage or spring waters of the state, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the water of running streams; *Provided*, That the person upon whose lands the seepage or spring waters first arise, shall have the prior right to such waters if capable of being used upon his lands.

[Right to water hoisted from mine. Section 4231.]

Legislation. Sec. 3177. Act 1889 p. 215 § 1, entitled:

AN ACT

To Establish and Define Priority of Appropriations of Water Drained from Sources Other Than Natural Streams.

CITATIONS.

A valid appropriation may be made from a canon the waters of which come entirely from rain fall.—*D. T. & F. W. R. Co. v. Dotson*, 20 C. 306, 38 P. 323.

This section is not applicable to a spring which constitutes the source of a natural stream.—*Clark v. Ashley*, 34 C. 285, 82 P. 588.

The prior right of the owner of the land does not apply to waters which come to the surface for the first time in the bed of a natural stream.—*La Jara etc. Ass. v. Hansen*, 35 C. 107, 83 P. 644.

Burden of proof is upon one who claims that the seepage water was diverted from a different stream. Insufficiency of evidence in such case.—*Id.*

This section does not apply to a ditch built to catch the surface drainage from the irrigation of adjoining lands.—*Burkart v. Meiberg*, 37 C. 189, 86 P. 99.

In an action to quiet title to a seepage ditch a ditch statement filed under the act of 1881 was not constructive notice of

CITATIONS CONTINUED.

the right of way for such ditch, such act being unconstitutional—*Blake v. Boye*, 38 C. 57, 88 P. 470.

In an action by prior appropriator to restrain a subsequent appropriator, if the defendant relies upon the defense that he has appropriated water only under this section such defense must be presented by answer and can not be raised by demur.—*Ogilvy 1. & L. Co. v. Insinger*, 19 A. 387, 75 P. 600.

3178. Water appropriated for domestic purposes shall not be employed for irrigation.

SEC. 14. Water claimed and appropriated for domestic purposes shall not be employed or used for irrigation or for application to land or plants in any manner to any extent whatever; *Provided*, That the provisions of this section shall not prohibit any citizen or town or corporation organized solely for the purpose of supplying water to the inhabitants to such city or town from supplying water thereto for sprinkling streets and extinguishing fires or for household purposes.

Legislation. Sec. 3178. Act 1891 p. 402 § 1, entitled:

AN ACT

In Relation to Water for Domestic Purposes.

The waste water from mines may be appropriated. § 4231.

3179. Penalty for misapplication—Jurisdiction of justice.

SEC. 15. Any person claiming the right to divert water for domestic purposes from any natural stream who shall apply or knowingly permit the water so diverted to be applied for other than domestic purposes to the injury of any other person entitled to use such water for irrigation shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than fifty dollars and not exceeding two hundred dollars in the discretion of the court wherein conviction is had. Each day of such improper application of water obtained in the manner aforesaid shall be deemed a separate offense. Justices of the peace in their several precincts shall have jurisdiction of the aforesaid offense subject to the right of appeal as in cases of assault and battery. [For right of appeal in cases of assault and battery see section 3869.]

Legislation. Sec. 3179. Act 1891 p. 402 § 2, cited under § 3178.

3180. Right to place wheels on streams—Condition.

SEC. 16. All persons on the margin, brink, neighborhood or precinct of any stream of water, shall have the right and power to place upon the bank of said stream a wheel, or other machine for the purpose of raising water to the level required for the purpose of irrigation, and the right of way shall not be refused by the owner of any tract of land upon which it is required, subject of course to the like regulations, as required for ditches, and laid down in sections hereinbefore enumerated.

Legislation. Sec. 3180. Act 1861 p. 68 § 8. R. S. p. 364 § 6. G. L. § 1377. G. S. § 1727.

3181. Map of ditch or reservoir to be filed.

SEC. 17. Every person, association or corporation hereafter constructing or enlarging any reservoir or reservoirs or constructing, changing the location of, or enlarging any ditch, canal or feeder for any ditch or reservoir, for the purpose of furnishing a supply of water for domestic, irrigation, power, storage, or for any other beneficial use, taking water from any natural stream, shall, within sixty days after the commencement of such construction, change of location, or enlargement, make a filing in the office of the state engineer for each specific claim, in such form as shall seem sufficient and satisfactory to the state engineer, and accompanied by the proper fees, as provided by statute, of a map, on tracing cloth or other material adapted for permanent record and preservation, made with permanent ink, showing the point of location of the headgate, the route of such ditch or canal, or the high water line of such reservoir or reservoirs, and the route of the feeder or feeders to, and ditches or canals from, such reservoir or reservoirs, the legal subdivisions of the land upon which such structures are built or to be built, if on surveyed lands, the names of the owners of such lands, and such courses, distances and corners by reference to legal subdivisions, if on surveyed lands, or to natural objects, if on unsurveyed lands, as will clearly designate the location of such structures.

[For fees of state engineer see sections 3206, 3211 and 3332.]

Legislation. Sec. 3181. Sec. 1 of Act of 1911, S. B. No. 533. Approved June 2, with the Emergency Clause Substitute for § 3181 which was § 1 of Act of 1903 p. 289, entitled:

AN ACT
Concerning Water Rights.

CITATIONS.

In the absence of testimony to show that a ditch was of the character contemplated by this section an objection that a map and statement was not filed was untenable.—*Denver T. & F. W. R. Co. v. Dotson*, 20 C. 306, 38 P. 323.

This section referred to in considering the rights of lien claimants and mortgagees in an irrigating ditch.—*Jarvis v. State Bank*, 22 C. 313, 45 P. 507.

Ditches taking water from a natural stream indirectly did not come within the provisions of G. S. sec. 1720. Priority dated from the time of beginning and not from the completion of the work.—*Water S. & S. Co. v. Larimer & W. I. Co.*, 24 C. 339, 343, 51 P. 503.

Section 2 of the act of 1881 held unconstitutional.—*Lamar Canal Co. v. Amity L. & I. Co.*, 26 C. 373, 58 P. 601. *Rio Grande L. & C. Co. v. Ditch Co.*, 27 C. 229, 232, 60 P. 728.

A statement filed under G. S. 1720 was not constructive notice of the existence of a right of way for a ditch, the statute being unconstitutional.—*Blake v. Boye*, 38 C. 56, 88 P. 470.

This section as it stood before amendment of 1903, cited in an action to divest one of a reservoir site on the ground that it was approved by the federal department through an error in law.—*O'Reilly v. Noxon* (Dec. 1910), 113 P. 487.

The state courts have jurisdiction to determine questions of grants to reservoir sites under the act of congress of March 3, 1891.—*Baldridge v. Leon Lake etc. Co.*, 20 A. 519, 80 P. 477.

3182. Statement attached to map.

SEC. 18. Upon or attached to such map shall be a statement showing, in the case of any ditch, canal or feeder:

First—The point of location of the headgate of the proposed structure;

Second—The depth, width, grade and length of each ditch, canal or feeder proposed;

Third—The carrying capacity of each ditch, canal or feeder in cubic feet per second;

Fourth—The time of commencement of work on such structures, which time may be the date of the commencement of the surveys therefor, or of the commencement of actual construction.

Fifth—The estimated cost of the project.

In the case of a filing on a reservoir site, the statement shall show the height of the proposed dam, the estimated cost, with the capacity in cubic feet and the surface area for each foot in depth of water stored up to and including the high water mark.

[Cubic inch of water defined. Section 7026.]

Legislation. Sec. 3182. Sec. 2 of Act of 1911, cited under § 3181. Substitute for § 2 of Act of 1903 cited under § 3181.

3183. Statement in case of enlargement—Temporary map.

SEC. 19. In case of change, enlargement or extension, such statement shall show the matters required above, referring to the structure before such change or enlargement, and shall then state, also, the information required in the above items second, third, fourth and fifth, referring to the structure as enlarged, and in addition thereto, shall state definitely the increase in capacity to be added to the original capacity by virtue of such enlargement. Whenever, through the necessity for extended surveys requiring long periods of time, it shall be impracticable for the claimant or claimants to file a complete map and statement within sixty days, as required above, a map and statement as complete as can be prepared within sixty days shall be filed, with a further statement that a complete map and statement will be filed later, and upon the completion of such survey a full and detailed map and statement, amending those first filed, shall be offered for examination and acceptance in the same manner as herein provided for the original filing.

Legislation. Sec. 3183. Sec. 3 of Act of 1911, cited under § 3181. Substitute for § 3 of Act of 1903 cited under § 3181.

3184. Statements must be signed and sworn to.

SEC. 20. Such statement shall be signed by the person or persons in whose behalf it is made, or in cases where an association or a corporation are the parties interested, the signature shall be the legal title of such association or corporation, signed by some

duly authorized agent or officer, who shall sign his own name, giving his official title. The truth of the matters shown in the map and statement shall be sworn to by the engineer in charge, or person making the survey, before some officer legally qualified for the administration of oaths.

Legislation. Sec. 3184. Sec. 4 of Act of 1911, cited under § 3181. Substitute for § 4 of Act of 1903 cited under § 3181.

3185. State engineer examine maps and statements—Return duplicate—Duplicate filed with recorder.

SEC. 21. The state engineer shall examine the map and statement, and if he shall find the data therein contained to be sufficient and satisfactory for a clear presentation of facts concerning the claims made, he shall endorse on each sheet of the filing "Accepted for filing in the office of the state engineer of Colorado on the.....day of.....," and attach thereto his signature and the seal of the state engineer's office. He shall then cause to be prepared a blue print, or other suitable reproduction, on cloth or other durable material adapted to the purpose, of each sheet of the filing, so endorsed, together with a negative print thereof and shall forward, said prints to the claimant who shall, within ninety days from the time stated as the date of commencement, file such blue print or reproduction in the office of the county clerk and recorder of the county in which the headgate of the proposed structure, or in which the proposed reservoir shall lie.

Legislation. Sec. 3185. Sec. 5 of Act of 1911, cited under § 3181. Substitute for § 5 of Act of 1903 cited under § 3181.

CITATIONS.

Filing requisite plats and notices with the recorder, construction of a canal with due diligence and the actual diversion of water unless accompanied by a beneficial use constitutes merely an inchoate right. Reasonable time of application depends upon circumstances of the case.—*Conley v. Dyer*, 43 C. 28, 95 P. 304.

3186. Certified copy evidence—Diligent construction.

SEC. 22. A certified copy of the map and statement thus filed in the state engineer's office shall be prima facie evidence

in any court having jurisdiction of the intent of the claimant or claimants to make such construction and to utilize such rights as are shown and described in the map and statement; *Provided*, That nothing herein contained shall be so construed as to dispense with the necessity for due diligence in the construction of such projects, or to the injury of those having rights prior to those of the claimants; *And, provided, further*, That nothing herein contained shall be so construed as to prevent a proper adjudication of rights in accordance with existing statutes governing such adjudication.

Legislation. Sec. 3186. Act 1903 § 6, cited under § 3181.

3187. Compliance with former act.

SEC. 23. All plats and statements or other documents heretofore filed or recorded in substantial compliance with the provisions or requirements of section 2 of an act entitled, "An Act to provide for the extension of the right of way for ditches, canals and feeders of reservoirs in certain cases, and requiring registration of all such hereafter made or enlarged," approved February 11, 1881, shall be taken, deemed and held to constitute a compliance with the provisions of this act.

[Section 2 of the act above referred to was held unconstitutional in *Lamar Co. v. Amity Co.*, 26 Colo., 370. The provisions of that section were re-enacted by L. '87, p. 315, which act was superseded by sections 3181-3187.]

Legislation. Sec. 3187. Act 1903 § 7, cited under § 3181.

The section referred to in the official note is § 2 Act 1881 p. 162 amended by Act 1887 p. 315 § 2. The ground of the holding was merely on account of defective title so that the present 1903 act requiring filings is not affected by the decision cited.

DRAINAGE.

3188. Petition to establish or enlarge drain.

SEC. 24. Whenever any person, company or corporation desires the construction, enlargement or extension of a ditch, drain or water course for the purpose of draining and reclaiming seeped or marshy land, they shall file with the board of county commissioners of the county or counties in which such improvement or improvements are to be located, a petition signed by one or more

of the land owners who own or represent the major portion of the land which would be affected by the proposed improvement.

Legislation. Sec. 3188. Act 1903 p. 209 § 1, entitled:

AN ACT

To Enable the Owners of Lands to Drain and Reclaim Them When the Same Can Be Done Without Affecting the Lands of Others, Describing the Powers and Duties of County Commissioners and Others in the Premises, and to Provide for the Enlargement [Enlargement] and Extension of the Same.

3189. Contents of petition—Plat.

SEC. 25. Said petition shall set forth the necessity for and probable benefits of such ditch, drain or water course, together with a list of the lands affected by the proposed improvement, and whether such lands so affected are in one or more counties, and therein naming the county or counties where such land is located, or through which said improvement may pass, and the names and addresses of the owners of such lands, and there shall be attached to said petition a plat showing approximately the location, direction, size and length of said drain, ditch or water course.

Legislation. Sec. 3189. Act 1903 § 2, cited under § 3188.

3190. Bond of petitioner.

SEC. 26. The petitioner or petitioners shall give a good and sufficient bond, payable to the county or counties and approved by the county clerk, conditioned, in case said drain, ditch or water course from any cause whatsoever is not constructed, to pay all expenses incurred by the county or counties on account of said proposed improvements.

Legislation. Sec. 3190. Act 1903 § 3, cited under § 3188.

3191. Board of viewers—Duties—Hearing—Notice.

SEC. 27. When such petition plat and bond are filed the board of county commissioners of each county where such improvement is to be made shall appoint a board of viewers consisting of three disinterested persons, residents of the county where the improvement is to be, who in turn shall select a competent engineer

to assist them, and in the event that such improvement extends into more than one county when the board of commissioners of each county where such improvement is to be made shall take a like action, and the same procedure shall be necessary of each county or board of county commissioners and of all petitioners or parties interested as would be necessary if the entire improvement were to be made in one county only. The board of viewers of each county wherein such improvement is to be made shall then proceed at once to view the line of the proposed drain and the lands affected thereby lying within the county for which they were appointed, and shall cause the engineer to prepare accurate surveys and estimates of the proposed work on the land lying within the county for which they were appointed, and shall set a day and place for hearing the views of all interested parties, receive protests, information, and any matter in relation to the proposed improvements; and the board of viewers shall notify all the resident land holders of their county affected by such improvement by personal service twenty days prior to the date of such meeting and personal service of said notice can not be had, or if any of said land holders are non-residents, then said notice shall be sent through the mail; and shall also cause to be published a copy of said notice in some weekly newspaper in said county for a period of not less than four weeks prior to said meeting.

Legislation. Sec. 3191. Act 1903 § 4, cited under § 3188.

3192. Hearing—Evidence—Report—When joint hearing.

SEC. 28. All persons whose lands may be affected may appear at the time specified for the said meeting before said board of viewers and present such testimony and affidavits as shall relate to the proposed drainage system, ~~with such~~ recommendations and objections as shall to them seem pertinent and necessary. If the proposed improvement extends into more than one county then the viewers appointed by each board of county commissioners of the county wherein a part of such improvement is to be made, shall meet at some point agreed upon by the different boards of viewers of the different counties and there prepare a joint report upon all matters and things required of a board of viewers where the im-

provement is in a single county, and shall then forward to each board of county commissioners of each county for which they are appointed a copy of said joint report, but this shall not be construed so as to require the persons whose lands are affected thereby by this section to appear before said board when acting jointly unless it would be more convenient for hearing provided for by this section to be a joint one by the different reviewing boards of the different counties.

Legislation. Sec. 3192. Act 1903 § 5, cited under § 3188.

3193. When improvement not feasible.

SEC. 29. If the viewers shall find that the proposed improvement is not feasible, they shall so report to the board of county commissioners, and the costs and expenses incurred shall be paid by the original petitioners, as provided under their bond.

Legislation. Sec. 3193. Act 1903 § 6, cited under § 3188.

3194. When feasible—Report—Appeal.

SEC. 30. If, however, the improvements shall be found feasible and of use and benefit and to be desired by owners representing a major part of the lands affected, the board of viewers shall so report to the board of county commissioners, and shall include in their report a detailed recommendation of the method to be pursued in prosecuting the work, and shall submit plans and specifications for the letting of contracts and fix and recommend the proportionate assessment for each tract of land affected, which assessment shall be proportionate to the benefits accruing to each of such tracts: *Provided, however,* That any person interested therein who shall feel aggrieved at the report and finding of the board of county commissioners shall have the right of appeal to the district court of said county and have such matters passed upon by a jury.

Legislation. Sec. 3194. Act 1903 § 7, cited under § 3188.

3195. Allotment of work—Bond.

SEC. 31. The board of viewers may, by agreement of the

land owners, recommend the allotment to each of a portion of the improvement; *Provided, however,* That each said owner shall give a good and sufficient bond for the proper performance of his proportion of the work so allotted.

Legislation. Sec. 3195. Act 1903 § 8, cited under § 3188.

3196. When work let by contract—Advertise for bids—Bond.

SEC. 32. In case no such allotment or division of the work is made, or in case all of it shall not be so allotted, the county commissioners shall cause an advertisement to be inserted in a daily or weekly paper of general circulation in the vicinity for a period of thirty days. Said advertisement shall be a notice to the land owners of the work proposed and shall call for bids on the work, in accordance with the recommendations of the board of viewers, and the contract shall be let to the lowest responsible bidder for the entire work lying within their respective counties, or to the lowest responsible bidders on each of the several portions of the work. The successful bidder or bidders shall file a good and sufficient bond with the board of county commissioners for the faithful performance of their contract.

Legislation. Sec. 3196. Act 1903 § 9, cited under § 3188.

3197. Completion—Expense pro rated—County treasurer collect.

SEC. 33. When the work shall have been completed and accepted by the engineer in charge, the county commissioners shall determine the total cost, damages and other expenses, and divide the same among the several tracts of land affected, in their respective counties, in the proportion determined by the board of viewers, and shall certify to the county assessor or assessors if in more than one county, a list of the lands affected, the total amounts to be assessed against each, with all credits for work or damages due the owner of each tract, with the net assessment of each, and the assessor or assessors if in more than one county shall enter the said net assessment against each of the several tracts of land lying within his county in the same manner as for other taxes, and the county treasurer of each county where such improvement

or part thereof is to be made, shall collect the same and reimburse the county for all moneys expended or expenses incurred subject to the right of appeal to the district court as to matters herein as in cases of appeal from disallowance of claims by board of county commissioners.

[For appeals from disallowance of claims by commissioners see section 1225.]

Legislation. Sec. 3197. Act 1903 § 10, cited under § 3188.

3198. Acceptance—Vouchers.

SEC. 34. Upon the proper acceptance by the engineer or engineers if such improvement is in more than one county the board of county commissioners of each county where such improvement is located, shall cause a voucher to be drawn upon the county treasurer for the amounts due on contracts, for damages and other expenses.

Legislation. Sec. 3198. Act 1903 § 11, cited under § 3188.

3199. Compensation of engineers and viewers.

SEC. 35. Each of the members of the board of viewers shall receive their necessary expenses and three dollars per day for services, and the engineers shall receive their necessary expenses and six dollars per day for each day necessarily employed.

Legislation. Sec. 3199. Act 1903 § 12, cited under § 3188.

3200. Right of eminent domain.

SEC. 36. The right of eminent domain shall extend to all improvements constructed under this act.

[See Chapter 45. Eminent Domain.]

Legislation. Sec. 3200. Act 1903 § 13, cited under § 3188.

3201. Disposition of water drained.

SEC. 37. All waters gathered by such drainage improvement shall be the property of those from whose lands the same is taken by such drainage canal, and the same shall be pro rated among

the different land holders from which such water is taken according to the cost of the improvement assessed against each one.

Legislation. Sec. 3201 Act 1903 § 14, cited under § 3188.

RESERVOIRS.

3202. Reservoirs—Right to water—Right of way—Condemnation—Embankments over ten feet submit to county board.

SEC. 38. Persons desirous to construct and maintain reservoirs, for the purpose of storing water, shall have the right to take from any of the natural streams of the state and store away any unappropriated water not needed for immediate use for domestic or irrigating purposes; to construct and maintain ditches for carrying such water to and from such reservoir, and to condemn lands for such reservoirs and ditches in the same manner provided by law for the condemnation of lands for right of way for ditches; *Provided*, No reservoir with embankments or a dam exceeding ten feet in height shall be made without first submitting the plans thereof to the county commissioners of the county in which it is situated, and obtaining their approval of such plans.

[Is the above section superseded by section 3205?]

Legislation. Sec. 3202. G. S. § 1724 Act 1879 § 28, cited under § 3175.

The only part of the text which might be superseded by § 3205 is the proviso requiring approval of the plans by the county commissioners, but as a new party is provided for the same approval it certainly abrogates such proviso.

CITATIONS.

Utilizing as a reservoir a natural depression including the stream is not unlawful per se.—*Larimer County R. Co. v. Peo.*, 8 C. 616, 9 P. 794.

Interpretation of a decree adjudicating a ditch and reservoir priority with limitations.—*Water S. & S. Co. v. Tenney*, 24 C. 351, 51 P. 507.

Respective rights and priorities of reservoirs for storage during non-irrigating season stated.—*New Loveland etc. Co. v. Cons. Home etc. Co.*, 27 C. 531, 62 P. 368.

One may not store water when it is needed for irrigation.—*Newby v. Peo.*, 28 C. 20, 62 P. 1036.

This section does not apply to the owner of a water priority who desires to store it for use later in the season. He may store the quantity he is entitled to.—*Seven Lakes R. Co. v. New Loveland etc. Co.*, 40 C. 387, 93 P. 485.

3203. Conducting water in natural streams—Taking out—Allowance for seepage—How determined.

SEC. 39. The owners of any reservoir may conduct the water therefrom into and along any of the natural streams of the state, but not so as to raise the waters thereof above ordinary high water mark, and may take the same out again at any point desired, without regard to the prior rights of others to water from said stream; but due allowance shall be made for evaporation and seepage, the amount to be determined by the commissioners of irrigation of the district; or, if there are no such commissioners, then by the county commissioners of the county in which the water shall be taken out for use.

[See also section 3225.]

Legislation. Sec. 3203. G. S. § 1725 Act 1879 § 39, cited under § 3175.

3204. Liability of owners for damage.

SEC. 40. The owners of the reservoirs shall be liable for all damages arising from leakage or overflow of the waters therefrom or by floods caused by breaking of the embankments of such reservoirs.

Legislation. Sec. 3204. G. S. § 1726 Act 1879 § 40, cited under § 3175.
See Sec. 3238 and notes.

CITATIONS.

Injunctive relief granted to prevent flooding of premises.—*Sylvester v. Jerome*, 19 C. 134, 34 P. 762.

One who collects water in an artificial pond and allows it to seep to the injury of other lands is liable.—*Canon City etc. R. Co. v. Oxtoby*, 45 C. 218, 100 P. 1128.

This section is not repealed by the act of 1899 p. 314, and sec. 9 thereof (sec. 3213) provides for liability of owners.—*Garnet D. & R. Co. v. Sampson*, 48 C. 285, 110 P. 80.

The owner's interest in a reservoir may be less than an absolute fee. It is not necessary to allege and prove negligence.—*Larimer County D. Co. v. Zimmerman*, 4 A. 81, 34 P. 1112.

It is the duty of the commissioner and his deputies to distribute the water in accordance with decreed priorities, and they are entitled to compensation.—*Gunnison County v. Hider*, 47 C. 445, 107 P. 1069.

3205. Construction of reservoirs—State engineer supervise.

SEC. 41. No reservoir of a capacity of more than seventy-five millions cubic feet of water, or having a dam or embankment in excess of ten feet in vertical height, and covering an area of more than 20 acres shall hereafter be constructed in this state, except the plans and specifications of the same shall first be approved by the state engineer; and the state engineer shall act as consulting engineer during the construction thereof, and shall have authority to require the material used and the work of construction to be done to his satisfaction; and no work shall be deemed complete under the provisions of this act until the state engineer shall give to the owners of such structures a written statement of the work of construction and the full completion thereof together with his acceptance of the same, which statement shall specify the dimensions and capacity of such reservoir or reservoirs.

Legislation. Sec. 3205. Act 1899 p. 314 § 1, entitled:

AN ACT

In Relation to Reservoirs.

3206. Cost of inspection and supervision paid by owner.

SEC. 42. The owners of such reservoirs shall pay to said state engineer his actual expenses incurred in making personal inspection, and five dollars per day and expenses to any deputy appointed by him to attend to such supervision when necessarily employed for such purpose.

Legislation. Sec. 3206. Act 1899 § 2, cited under § 3205.

3207. Engineer determine amount of water to be stored.

SEC. 43. The state engineer shall annually determine the amount of water which it is safe to impound in the several reservoirs within this state and it shall be unlawful for the owners of any reservoir to store in said reservoir water in excess of the amount so determined by the state engineer to be safe.

Legislation. Sec. 3207. Act 1899 § 3, cited under § 3205.

3208. Water commissioner withdraw excess water—Close inlets.

SEC. 44. In the event of the owners of any such reservoir impounding water therein to a depth greater than that determined by the state engineer to be safe, it shall be the duty of the water commissioner of the district wherein such reservoir shall be located, to forthwith proceed to withdraw from said reservoir so much of the water so impounded therein as shall be in excess of the amount so determined by the state engineer to be safe, and shall close the inlets to the same so as to prevent said reservoir from being refilled to an amount beyond what said state engineer shall have designated as being safe. In the event of the owners of said reservoir, or any other person or persons, interfering with the water commissioner in the discharge of said duty, the said water commissioner shall call to his aid such persons as he deems necessary, and employ such force as the circumstances demand to enable him to comply with the requirements of this section.

Legislation. Sec. 3208. Act 1899 § 4, cited under § 3205.

3209. Complaint that reservoir is unsafe—Duty of engineer.

SEC. 45. Upon complaint being made to the state engineer by three or more persons residing or having property in such a location that their homes or property would be in danger of destruction or damage in the event of a flood occurring on account of the breaking of the embankment of any reservoir within the state, that said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state engineer to forthwith examine said reservoir and determine the amount of water it is safe to impound therein. If upon such examination, the state engineer shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall be his duty to immediately cause said water to be drawn off from said reservoir, to such an extent as will, in his judgment, render the same safe. If water is then flowing into said reservoir, he shall cause the same to be discontinued.

Legislation. Sec. 3209. Act 1899 § 5, cited under § 3205.

3210. Engineer may use force—Violation of engineer's order.

SEC. 46. The state engineer is hereby authorized and empowered to use such force as is necessary to perform the duties required of him in the preceding section, and to have and exercise all of the powers conferred upon the water commissioner by section 4 of this act. If, after any of such reservoirs shall have been examined by said state engineer, the owners thereof, or any other person or persons, shall fill or attempt to fill them, or either of them to a point in excess of the amount the state engineer shall have determined to be safe, then it shall be the duty of the water commissioner of the district wherein such reservoir is located to proceed as is directed by section 4 of this act.

[Section 4 above referred to is section 3208.]

Legislation. Sec. 3210. Act 1899 § 6, cited under § 3205.

3211. Expense of examination—By whom paid.

SEC. 47. The persons calling upon the state engineer to perform the duty required of him by section 5 hereof shall pay him mileage in advance at the rate of ten cents per mile for each mile actually and necessarily traveled in going to and from said reservoir, and should the state engineer find upon examination that such reservoir is in an unsafe condition, the owners thereof shall be liable for all expenses incurred in such examination.

• [Section 5 above referred to is section 3209.]

Legislation. Sec. 3211. Act 1899 § 7, cited under § 3205.

3212. Appeal from decision of engineer.

SEC. 48. In the event of either party being dissatisfied with the decision of the state engineer, they may take an appeal to the county, or district court of the county wherein said reservoir is located, and said court shall hear and determine the matter summarily at the earliest practical time without written pleadings or the aid of a jury; subject to the right of either party to take an appeal or writ of error as in other civil cases; *Provided*, That the judgment of the state engineer shall control until final determination of the cause.

Legislation. Sec. 3212. Act 1899 § 8, cited under § 3205.

3213. Owners liable for damages in case of breakage of reservoir.

SEC. 49. None of the provisions of this act shall be construed as relieving the owners of any such reservoir from the payment of such damages as may be caused by the breaking of the embankments thereof, but in the event of any such reservoir overflowing, or the embankments, dams or outlets breaking or washing out, the owners thereof shall be liable for all damage occasioned thereby.

Legislation. Sec. 3213. Act 1899 § 9, cited under § 3205.

CITATIONS.

The act of 1899 did not repeal sec. 3204. Liability of owners for damages from leakage or overflow.—*Garnet D. & R. Co. v. Sampson*, 48 C. 285, 110 P. 80.

3214. Violation of act—Penalty—Disposition of fines.

SEC. 50. Any reservoir company failing or refusing, after ten day's notice in writing having been given, to obey the directions of the state engineer as to the construction or filling of any reservoir as herein provided, shall be subject to a fine of not less than fifty dollars, for each offense, and each day's continuance after time of notice has expired shall be considered a separate offense; such fines to be recovered by civil action in the name of the people, by the district attorney, upon the complaint of the state engineer, and in the county where the injury complained of occurred, the proceeds of all fines, after payment of costs and charges of the proceedings, shall be paid into the county treasury for the use of the general fund of the county.

Legislation. Sec. 3214. Act 1899 § 10, cited under § 3205.

3215. Survey of reservoir site on arid land.

SEC. 51. It shall be the duty of the county surveyor of each county within this state upon the request of the owner of ten or more acres of arid land lying in such county, to locate and survey an available site for a reservoir upon such land, such reservoir to be used for the storage of water to irrigate the land contiguous

thereto and such reservoir to be of a capacity to hold sufficient water to properly irrigate not less than ten acres of such land.

Legislation. Sec. 3215. Act 1903 p. 262 § 1, entitled:

AN ACT

To Promote Irrigation of the Arid Lands Within This State by Water Obtained from Wells or Sources Other Than the Flow from Natural Sources.

3216. Construction of reservoir—County surveyor supervise.

SEC. 52. Within thirty (30) days after such location and survey by the county surveyor, the owner of such land shall begin the construction of such reservoir and shall work continuously thereon until the completion thereof and all of such work of construction and the construction of such dam or dams as may be necessary, and the construction of the outlet to such reservoir shall be done under the direction and supervision of such county surveyor.

Legislation. Sec. 3216. Act 1903 § 2, cited under § 3215.

3217. Completion—Plat filed—Contents.

SEC. 53. Upon the completion of the reservoir it shall be the duty of the county surveyor to file with the board of county commissioners of such county, a map or plat of the land upon which such reservoir is located; describing such land by legal subdivisions and showing thereon the name of the owner, the number of acres of arid land contiguous to such reservoir claimed by such owner; the size of water capacity in cubic feet of such reservoir; the number of acres of land capable of being irrigated by such reservoir; the source and means of supplying such reservoir with water, and indicating the point of location upon the land of such reservoir.

Legislation. Sec. 3217. Act 1903 § 3, cited under § 3215.

3218. Approval of plat—Duty of owner.

SEC. 54. It shall be the duty of such board of county commissioners to, within sixty (60) days after the filing of such map or plat, to approve the same by resolution spread upon the records

of such board. That it shall be the duty of such owner or his tenant, to use such reservoir and keep the same in good repair and in a safe condition.

Legislation. Sec. 3218. Act 1903 § 4, cited under § 3215.

3219. Inspection—Notice to owner—Failure to repair.

SEC. 55. It shall be the duty of the county surveyor to annually inspect each reservoir within his county so constructed under the provisions of this act, and he shall file with the board of county commissioners a report in writing showing the condition of such reservoir and a statement as to whether or not such reservoir was being used during the year of such inspection for the purposes contemplated by this act; and should he find any such reservoir, or dam or outlet thereof, in an unsafe and dangerous condition he shall in writing so notify the owner or tenant thereof as provided in section three hereof; and should such owner or his tenant fail or refuse within the aforesaid period of thirty (30) days to place such reservoir, dam and outlet in a safe and proper condition, then and in that event it shall be the duty of the said county surveyor to immediately let out and release under his direct supervision any and all waters that may have accumulated in such reservoir; and the said county surveyor shall within ten (10) days thereafter file with the board of county commissioners a report in writing of his acts in the premises.

[Section 3 above referred to is section 3217.]

Legislation. Sec. 3219. Act 1903 § 5, cited under § 3215.

3220. Compensation of county surveyor—By whom paid.

SEC. 56. The county surveyor shall be paid for his services at the time of making such survey and location, the sum of ten (10) dollars and all the necessary traveling expenses, and upon the completion of such reservoir and the filing of the map or plat specified in section 3 hereof he shall be paid the further sum of five (5) dollars and all necessary traveling expenses and superintending the construction of such reservoir, dam and outlet, and such payments and traveling expenses shall be borne by said owner or tenant of such reservoir and land; and for annually inspecting

and filing his report of the condition of such reservoir within his county as specified in section 4 hereof, the county surveyor shall be paid the sum of five (5) dollars for each of such reservoirs so inspected and so reported upon, out of the general fund of such county.

[Sections 3 and 4 above referred to are sections 3217 and 3218.]

Legislation. Sec. 3220. Act 1903 § 6, cited under § 3215.

EXCHANGE OF WATER.—CHANGING POINT OF DIVERSION.

3221. Damages.

SEC. 57. County surveyors and members of boards of county commissioners within this state shall not be liable in damages for any act done by them in pursuance of the provisions of this act.

Legislation. Sec. 3221. Act 1903 § 7, cited under § 3215.

3222. Exchange of water, less seepage.

SEC. 58. That whenever any person or company shall divert water from one public stream and turn it into another public stream, such person or company may take out the same amount of water again, less a reasonable deduction for seepage and evaporation, to be determined by the state engineer.

[See also section 3232.]

Legislation. Sec. 3222. Act 1897 p. 176 § 1, entitled:

AN ACT

To Provide for and to Regulate the Exchange of Water Between Reservoirs and Ditches and the Public Streams.

CITATIONS.

This section cited in an action concerning the right of fishing.—*Hartman v. Tresise*, 36 C. 166, 84 P. 691.

3223. Must maintain flumes and register water.

SEC. 59. Any person or company transferring water from one public stream to another shall be required to construct and maintain under the direction of the state engineer measuring flumes or weirs and self-registering devices at the point where the water leaves its natural watershed and is turned into another,

and also at the point where it is finally diverted for use from the public stream.

[See also section 3249.]

[Failure to maintain 3249.]

Legislation. Sec. 3223. Act 1897 § 2, cited under § 3222.

3224. Water commissioner keep record.

SEC. 60. It shall be the duty of the water commissioner of the district in which the water is used to keep a record of the amount of water so turned into his district from any other district.

Legislation. Sec. 3224. Act 1897 § 3, cited under § 3222.

3225. Reservoirs and ditches may exchange.

SEC. 61. When the rights of others are not injured thereby, it shall be lawful for the owner of a reservoir to deliver stored water into a ditch entitled to water or into the public stream to supply appropriations from said stream, and take in exchange therefor from the public stream higher up an equal amount of water, less a reasonable deduction for loss, if any there be, to be determined by the state engineer; *Provided*, That the person or company desiring such exchange shall be required to construct and maintain under the direction of the state engineer measuring flumes or weirs and self-registering devices at the point where the water is turned into the stream or ditch taking the same or as near such point as is practicable so that the water commissioner may readily determine and secure the just and equitable change of water as herein provided.

[See also section 3202.]

Legislation. Sec. 3225. Act 1897 § 4, cited under § 3222.

3226. Changing point of diversion—Petition—Practice and procedure.

SEC. 62. Every person, association or corporation desirous of changing in whole or in part the point or points of diversion of his or its right to use water from any of the streams of the state, shall present a petition to the district court from which the original decree issued, whether the change be from one district

to another or not; praying that such change be granted. The practice and procedure upon all petitions, save as herein provided, shall be the same as if the petition were for an original statutory decree; and if the change be from one district to another, the court in which the petition is filed shall require notice and service in each district intervening between the original and the new points of diversion in the manner as now provided by law for statutory water adjudications in said several districts, save that all process or notice shall be issued from and returnable to the court in which the petition is filed as aforesaid.

Legislation. Sec. 3226. Act 1903 p. 278 § 1, entitled:

AN ACT

In Relation to the Procedure in Changing the Point of Diversion of the Right to Use Water from the Streams of the State.

CITATIONS.

Right to change point of diversion existed prior to act of 1899.—*Strickler v. Colo. Springs*, 16 C. 62, 26 P. 313. *Lower Latham D. Co. v. Bijou I. Co.*, 41 C. 213, 93 P. 483.

The act of 1899 was valid.—*New Cache La Poudre Co. v. Water S. & S. Co.*, 29 C. 472, 68 P. 782.

This act provides a method of procedure and prohibits the change without adjudication.—*Fort Lyon C. Co. v. Chew*, 33 C. 397, 402, 81 P. 38.

In an action to quiet title to a water right the court has not power to change the point of diversion from one ditch to another.—*Fluke v. Ford*, 35 C. 112, 84 P. 469.

One has a right to apply a diversion to a larger or smaller acreage as he may see fit but may not divert a larger quantity of water.—*Fullon I. D. Co. v. Meadow Island I. Co.*, 35 C. 589, 86 P. 748.

The acts of 1899 and 1903 apply to changes made before the act took effect.—*Cache La Poudre Co. v. Arthur I. Co.*, 37 C. 531, 87 P. 799. *Ashenfelter v. Carpenter*, 37 C. 534, 87 P. 801.

In a proceeding to change the point of diversion where no special findings were made it will be assumed that in denying the application the court found that the rights of others would be injuriously affected.—*Baer Bros. L. Co. v. Wilson*, 38 C. 101, 88 P. 265.

Owners below original intake can not object on the ground that owners between new and old point or in another district will

CITATIONS CONTINUED.

be affected.—*Crippen v. Glasgow*, 38 C. 104, 87 P. 1073. *Lower Latham D. Co. v. Bijou I. Co.*, 41 C. 213, 93 P. 483.

In a proceeding under the act of 1903 only the question of the right to make the change can be determined. The act includes mutual ditch companies and shareholders.—*Wadsworth D. Co. v. Brown*, 39 C. 59, 88 P. 1060.

Assignments of error as to admission and rejection of evidence not considered because of defective abstracts.—*Roberson v. Wilmoth*, 40 C. 75, 90 P. 95.

This statute is purely remedial and one of its objects is to prevent a multiplicity of suits and to require notice.—*Lower Latham D. Co. v. Bijou I. Co.*, 41 C. 217, 93 P. 483.

Petition by one holding equitable rights; consent of owner. Diversion of a specified fraction. Decree should protect rights of third persons and if impossible to do so petition should be denied.—*Bates v. Hall*, 44 C. 362, 98 P. 4.

3227. Notice to parties affected—When change allowed.

Sec. 63. The court shall require proof that all parties who may be affected by the change have been duly notified in the proceeding, as in the case of an original adjudication, and shall hear evidence to determine whether such change will injuriously affect the vested rights of others in and to the use of water, and a decree shall be entered permitting the change as prayed for, unless it appear that such change will injuriously affect the vested rights of others; and if such injury appear, the court shall decree the change only upon such terms and conditions as may be necessary to prevent such injurious effect, or to protect the parties affected or if impossible so to do, may deny said application.

[No further publication required in proceedings after decree entered. Section 3289.]

Legislation. Sec. 3227. Act 1903 § 2, cited under § 3226.

CITATIONS.

Section 2 of the act of 1899 referred to.—*Fort Lyon C. Co. v. Chew*, 33 C. 397, 402, 81 P. 38.

The decree should protect the rights of third persons, and if this is impossible the petition should be denied.—*Bates v. Hall*, 44 C. 369, 98 P. 6. *Vogel v. Minnesota Canal Co.*, 47 C. 540, 107 P. 1111.

3228. Several applications in one—Consolidation—Process.

SEC. 64. Applications to change two or more points of diversion to the same common point may be embraced in one petition, or if separately made in the same court, may be consolidated: and petitions separately filed in the same court for changes to several points may be consolidated by the court or judge for notice, hearing or otherwise, if it appear practicable so to do; and the court or judge shall have power to extend the time for service, notice and appearance, and to make all necessary or expedient rules in the proceeding as in the case of a statutory water adjudication.

Legislation. Sec. 3228. Act 1903 § 3, cited under § 3226.

3229. Certified copy of decree filed—Notice of change.

SEC. 65. Upon the granting of a decree of change, the petitioner desirous of making the change, shall cause to be prepared certified copies of the decree, and shall cause filings thereof to be made with the county clerk of the county in which the original point of diversion is located, and with the county clerk of the county in which the new point of diversion is, or is to be located, and also in the office of the state engineer. Thereupon the change decreed shall be recognized in the distribution of water, the priority rights being allotted according to the terms of the said decree, and the state engineer shall immediately issue notices to that effect to the water commissioners in the water district or districts affected, and to the division superintendent or superintendents in said divisions.

[Office of division superintendent abolished and division engineers provided in their place. Section 3335.]

Legislation. Sec. 3229. Act 1903 § 4, cited under § 3226.

3230. Change to other district—Copy of decree filed.

SEC. 66. In case a change be decreed from one district to another, the petitioner shall file a certified copy of the decree of change in the court having jurisdiction of the statutory water adjudication in the district of the new point of diversion, and thereupon, on motion, the court in which the copy is so filed, shall

order a record of the decree of change, and the original decree theretofore entered in said court shall accordingly stand modified as to the matters contained in the said decree of change.

Legislation. Sec. 3230. Act 1903 § 5, cited under § 3226.

CITATIONS.

A change may be made from one water district to another notwithstanding the law lacks certain specific directions for giving effect to the decree.—*Lower Latham D. Co. v. Bijou I. Co.*, 41 C. 218, 93 P. 483.

3231. Re-arguments, reviews and appeals.

SEC. 67. Re-arguments and reviews of and appeals from decrees entered hereunder may be had as in the case of a statutory water adjudication; *Provided, however,* They be prayed within thirty days from the time of entering the decree complained of.

[Sections 3226-3231 supersede sections 1 and 2, p. 235, L. '99, of which act section 3232 was section 3.]

Legislation. Sec. 3231. Act 1903 § 6, cited under § 3226.

3232. Owner may exchange or loan water right.

SEC. 68. It shall be lawful, however, for the owners of ditches and water rights taking water from the same stream, to exchange with, and loan to, each other, for a limited time, the water to which each may be entitled, for the purpose of saving crops or of using the water in a more economical manner; *Provided,* That the owner or owners making such loan or exchange, shall give notice in writing signed by all the owners participating in said loan or exchange, stating that such loan or exchange has been made, and for what length of time the same shall continue, whereupon said water commissioner shall recognize the same in his distribution of water.

Legislation. Sec. 3232. Act 1899 p. 236 § 3, entitled:

AN ACT

In Relation to Irrigation.

Sections 1 and 2 of this Act were superseded by Act 1903 p. 278, now §§ 3226 et seq.

CITATIONS.

This section should be interpreted as neither adding to nor taking from any rights which owners had before the act was passed. It is incumbent upon a party asserting rights under a loan, to show that it will not impair the rights of others.—*Fort Lyon Canal Co. v. Chew*, 33 C. 397, 401, 81 P. 37.

In a suit to enjoin a water commissioner from diverting water loaned the lenders and borrowers are necessary parties.—*Latham D. Co. v. Bijou I. Co.*, 41 C. 218, 93 P. 483.
Squire v. Livezey, 36 C. 304, 85 P. 181.*

This section is not in violation of sec. 6 art. XVI of the constitution. Defective complaint to restrain interference with use of water loaned.—*Bowman v. Virdin*, 40 C. 248, 90 P. 506.

II. DUTIES OF OWNERS.

Section.

- 3233. Owners shall maintain embankments—Tail ditch.
- 3234. Vested rights not impaired.
- 3235. Owner of ditch crossing highway must maintain bridge.
- 3236. Ditch must be bridged in three days—Duty of supervisor.
- 3237. Proceedings against owner for payment—Damages.
- 3238. Owner of ditch must prevent waste.
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- 3240. Penalty for violation of this act.
- 3241. When ditches in cities must be covered.
- 3242. Head of ditch to be latticed.
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- 3244. Owner maintain headgate—Size of timbers.
- 3245. Same—Liability of owner for neglect or refusal.
- 3246. Owner maintain headgates and wastegates—Effect of failure.
- 3247. Provide locks for headgate—Effect of failure.
- 3248. Ditch owner maintain head gates and weirs.
- 3248. Ditch owners maintain headgates and weirs.
- 3249. Owners of ditch or reservoir transferring water must maintain headgate and weirs—Effect of failure.
- 3250. Rating tables furnished commissioners.
- 3251. When water not to be stored in reservoirs—Gauge rods.
- 3252. Control of headgates and measuring weirs.
- 3253. Survey of reservoirs—Report—Gauge rods—Failure to comply.
- 3254. Ditch owners provide flow on demand of users.
- 3255. Ditches to be kept in repair—Outlets.

[For liability of co-owners in caring for ditch and their lien for expense see sections 4051-4060.]

[Ditch companies must keep their ditch in repair. Section 993.]

Section.

II. DUTIES OF OWNERS.

*Continued.***Section.**

3256. Measurement of water.

3257. Penalties for refusal or neglect to deliver water.

3258. Water commissioner measure water—Failure.

3259. Jurisdiction of justice of the peace.

" No person to receive more water than he is entitled to.

3261. Duty of party receiving more water than he is entitled to.

3233. Owner shall maintain embankments—Tail ditch.

SEC. 69. The owner or owners of any ditch for irrigation or other purposes, shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others, and shall make a tail ditch, so as to return the water in such ditch with as little waste as possible into the stream from which it was taken.

[The above section is taken from G. S., '83, which gives its origin as L. '72, p. 144, section 1 and L. '76, p. 78, section 2.]

Legislation. Sec. 3233. The first clause of the text concerning embankments is R. S. p. 364 § 7, same as G. L. § 1378.

The second clause referring to the tail ditch first appears as part of § 1 Act of 1872 p. 144, an Act which was local to Pueblo county.

The Act of 1876 p. 78 cited in the official note was never any part of the section.

The whole section as it now reads is a reprint of G. S. § 1728.

The latter clause except as to Pueblo county was never enacted as a statute until by blunder it was inserted in the G. S. section, the note to which section is misleading.

CITATIONS.

Owners of an irrigating ditch liable for damages by overflowing, under this and secs. 993 and 3238.—*Greeley I. Co. v. House*, 14 C. 553, 24 P. 330. *Old v. Keener*, 22 C. 10, 43 P. 127.

Cited in dissenting opinion in an action for damages caused by the breaking of a reservoir.—*Garnet D. & R. Co. v. Sampson* 48 C. 285, 110 P. 1137.

3234. Vested rights not impaired.

SEC. 70. Nothing in this chapter contained shall be so construed as to impair the prior vested rights of any mill or ditch owner or other person to use the waters of any such water course.

Legislation. Sec. 2234. G. S. § 1729. G. L. § 1379. R. S. p. 364 § 8, which last cited section changed the verbiage of section 10 of the same tenor in the Act 1861 p. 69.

3235. Owner of ditch crossing highway must maintain bridge.

SEC. 71. Any ditch company constructing a ditch, or any individual having ditches for irrigation, or for other purposes, wherever the same be taken across any public highway or public traveled road, shall put a good substantial bridge, not less than fourteen feet in breadth, over such watercourse where it crosses said road.

Legislation. Sec. 3235. Act of 1867 p. 62 § 1. R. S. p. 364 § 10. G. L. § 1381. G. S. § 1730.

3236. Ditch must be bridged in three days—Duty of supervisor.

SEC. 72. When any such ditch or watercourse shall be constructed across any public traveled road, and not bridged within three days thereafter, it shall be the duty of the supervisor of the road district to put a bridge over said ditch or watercourse, of the dimensions specified in section ten of this chapter, and call on the owner or owners of the ditch to pay the expenses of constructing such bridge.

[Section 10 referred to in last above section is section 3235.]

[Penalty for owner failing to place bridge over ditch, section 5829.]

Legislation. Sec. 3236. Act of 1867 p. 62 § 2. R. S. p. 364 § 11. G. L. § 1282. G. S. § 1731.

3237. Proceedings against owner for payment—Damages.

SEC. 73. If the owner or owners of such ditch refuse to pay the bill of expenses so presented, the supervisor may go before any justice of the peace in the township or precinct, and make oath to the correctness of the bill, and that the owner or owners of the ditch refuse payment; and thereupon such justice of the peace shall issue a summons against such owner or owners, requiring him or them to appear and answer to the complaint of such supervisor in an action of debt for the amount sworn to be due, such summons to be made returnable and served, and proceedings to be had thereon as in other cases; and in case judgment shall be

given against such owner or owners, the justice shall assess, in addition to the amount sworn to be due as aforesaid, the sum of ten dollars, as damages arising from the delay of such owner or owners, such judgment to be collected as in other cases, and to be a fund in the hands of the supervisor of roads, for the repairs of roads in such precinct or district.

Legislation. Sec. 3237. R. S. p. 365 § 12. G. L. § 1383. G. S. § 1732.

3238. Owner of ditch must prevent waste.

SEC. 74. The owner of any irrigating or mill ditch shall carefully maintain and keep the embankments thereof in good repair, and prevent the water from wasting.

[See also section 3233.]

Legislation. Sec. 3238. Act 1876 p. 78 § 1. G. L. § 1385. G. S. § 1733.
Owner to keep ditch in repair. § 3255. Ditch company the same.
§ 993. Owner of reservoir liable for damage by leaks and breaks. § 3204.

CITATIONS.

Owners of an irrigating ditch are liable for damages under this and secs. 993 and 3233 caused by overflowing.—*Greeley I. Co. v. House*, 14 C. 553, 24 P. 330.

Cited in dissenting opinion in an action for damages caused by the breaking of a reservoir.—*Garnet D. & R. Co. v. Sampson* 48 C. 285, 110 P. 1137.

A contract releasing a ditch company from damages by reason of unavoidable accidents would not cover a case of gross negligence.—*Catlin L. & C. Co. v. Best*, 2 A. 483, 31 P. 392.

3239. Running excess of water forbidden.

SEC. 75. During the summer season it shall not be lawful for any person or persons to run through his or their irrigating ditch any greater quantity of water than is absolutely necessary for irrigating his or their said land, and for domestic and stock purposes; it being the intent and meaning of this section to prevent the wasting and useless discharge and running away of water.

Legislation. Sec. 3239. Act 1876 p. 78 § 2. G. L. § 1386. G. S. § 1734.

CITATIONS.

A ditch company contract restricting the use of water is in line with the policy prescribed by this section.—*Wright v. Platte Val. I. Co.*, 27 C. 330, 61 P. 606.

3240. Penalty for violation of this act.

SEC. 76. Any person who shall wilfully violate any of the provisions of this act shall, on conviction thereof before any court having competent jurisdiction, be fined in a sum of not less than one hundred (100) dollars. Suits for penalties under this act shall be brought in the name of the people of the state of Colorado.

[The Act above referred to embraces sections 3238-3240.]

Legislation. Sec. 3240. Act 1876 p. 78 § 3. G. L. § 1387. G. S. § 1735.

CITATIONS.

Cited in dissenting opinion in an action for damages caused by the breaking of a reservoir.—*Garnet D. & R. C. v. Sampson* 48 C. 285, 110 P. 1137.

3241. When ditches in cities must be covered.

SEC. 77. That every corporation and company, whether created by special act, or organized under the general incorporation laws of this state, and every partnership, person or persons who now, or may at any time hereafter, own or control any canal or ditch, or any part thereof, being two feet in width or over, and carrying water to the depth of twelve inches or over, which canal or ditch, or any part thereof, is within the corporate limits of any city denominated in the law as of the first class, or any city existing by special charter of a population equal to or exceeding said cities of the first class, or any of the additions thereto, shall, at their own expense, within sixty days after this act shall have taken effect, confine, flume, and cover over, all or any part of such canal or ditch, whether located on or across private property, public highways or alleys in said city or additions thereto, in a reasonable and sufficient manner, and with such materials as will render such fluming or covering safe and a sure protection to the lives and property of the inhabitants of said city; and any such corporation, company, partnership, person or persons, shall at all times thereafter keep and maintain any and all such structures, confining, fluming and covering of such canal or ditch in good order and repair, at their own expense.

[Cities of the first class embrace those with a population over 15,000, section 6532.]

Legislation. Sec. 3241. Act 1887 p. 65 § 1, entitled:

AN ACT

To Compel the Owners of Canals and Ditches Situated Within Cities of the First Class, or Cities Existing by Special Charter, of a Population Equal to or Exceeding Said Cities of the First Class, to Confine, Flume and Cover the Same at Their Own Expense.

CITATIONS.

In an action to recover for the drowning of a child in a ditch flowing through a city the act of 1887 was held constitutional and a failure to comply with its provisions was negligence per se.—*Platte & D. Co. v. Dowell*, 17 C. 379, 30 P. 69.

3242. Head of ditch to be latticed.

SEC. 78. Such corporation, company, partnership, person or persons, shall, at their own expense, safely and securely lattice or slat the head of such flume or covering with proper materials, so that persons or animals cannot accidentally enter such flume or covering at the head thereof, and pass or be carried down the current of said canal or ditch, and shall thereafter maintain and keep the same in good order and repair, at their own cost and expense.

Legislation. Sec. 3242. Act 1887 § 2, cited under § 3241.

3243. Penalty for failure to cover and lattice.

SEC. 79. If any such corporation, company, partnership, person or persons, shall fail or refuse to comply with any of the provisions of the two preceding sections, such corporation, company, partnership, person or persons, shall forfeit and pay to the county, for the use of the common school fund, the sum of fifty dollars for each and every day such failure or refusal shall continue; to be recovered by a civil action in the name of the people of the state of Colorado, in any court of competent jurisdiction; *Provided*, That nothing in this act shall be construed to bar an action for special damages by any person who shall have suffered such damages by reason of any failure to comply with any of the provisions of this act.

Legislation. Sec. 3243. Act 1887 § 3, cited under § 3241.

3244. Owner maintain headgate—Size of timbers.

SEC. 80. That the owner or owners of every irrigating ditch, flume or canal, in this state, shall be required to erect and keep in good repair a headgate at the head of their ditch, flume or canal. Such headgate, together with the necessary embankments, shall be of sufficient height and strength to control the water at all ordinary stages. The framework of such headgate shall be constructed of timber not less than four inches square, and the bottom, sides, and gate or gates, shall be of plank, not less than two inches in thickness.

[See also section 3248.]

Legislation. Sec. 3244. G. S. § 1736. Act 1881 p. 165 § 1, entitled:

AN ACT

To Provide for Headgates for Irrigating Ditches

3245. Same—Liability of owner for neglect or refusal.

SEC. 81. Owners of all ditches shall be liable for all damages resulting from their neglect or refusal to comply with the provisions of section one of this act.

[Section 1 above referred to is section 3244.]

Legislation. Sec. 3245. G. S. § 1737. Act 1881 § 2, cited under § 3244.

CITATIONS.

Under this and other sections cited ditch owners are liable for neglect to maintain their ditches in good repair.—*Catlin L. & C. Co. v. Best*, 2 A. 483, 31 P. 392.

3246. Owner maintain headgates and wastegates—Effect of failure.

SEC. 82. All persons, associations or corporations who have heretofore or who may hereafter divert water for purposes of irrigation from any of the public streams of the state, shall erect and maintain headgates and wastegates in connection therewith, and in case of failure or neglect, or refusal to do so, after five days notice has been given by the water commissioner or state engineer, then said headgates shall be constructed by the water commissioner of the district within which said ditch, canal or conduit

may be located, and if, upon demand, the owner or owners of said ditch, canal or conduit shall neglect or refuse to pay the expenses thereof, then the said water commissioner shall take such proceedings to recover the same as is now provided for by sections seventeen hundred and thirty, seventeen hundred and thirty-one and seventeen hundred and thirty-two of the general statutes of 1883, in the case of failure to build and maintain bridges.

[G. S., sections 1730, 1731 and 1732 above referred to are sections 3235, 3236 and 3237 respectively.]

Legislation. Sec. 3246. Act 1889 p. 161 § 1, entitled:

AN ACT

To Provide for Erecting Head-gates, Waste-gates, Locks, Fastenings, and Paying the Expenses Thereof.

CITATIONS.

This section cited in an action to restrain the discharge of water from a ditch, upon the land of another.—*Bogliano v. Giorgetta*, 20 A. 345, 78 P. 614.

3247. Provide locks for headgate—Effect of failure.

SEC. 83. All persons, associations or corporations shall put and keep suitable locks and fastenings on their headgates, where water is conducted from the public streams or heads of supply, and if said persons, associations or corporations refuse or neglect to provide locks and suitable fastenings for said headgates, after five days' notice by the water commissioner of the district, or by the state engineer, it is made the duty of the water commissioner of the water district, and its superintendent, to provide suitable locks and fastenings, and if the owner or owners of said ditch, canal or conduit shall neglect or refuse to pay the expenses thereof, the water commissioner shall take such proceedings to recover the same as are provided in section one of this act; the keys of said locks to be under the control and in possession of the water commissioner of the district during the season of irrigation or domestic distribution of water.

[Section 1 above referred to is section 3246.]

Legislation. Sec. 3247. Act 1889 § 2, cited under § 3246.

3248. Ditch owner maintain headgates and weirs.

SEC. 84. The owner or owners of any irrigation ditch, canal, flume or reservoir in this state, taking water from any stream, shall erect and maintain in good repair, at the point of intake of such ditch, canal, flume or reservoir, suitable and proper headgate or bendgate of height and strength and with embankments sufficient to control the water at all ordinary stages and suitable and proper measuring flume, weirs and devices, and shall also erect and maintain in good repair suitable wastegates in connection with such ditch, canal, flume, or reservoir intake. The framework of such headgate shall be constructed of timber not less than four inches square, and the bottom, sides and gate or gates shall be of plank not less than two inches in thickness, or said gate may be made of other material of equal strength and durability, or may be made and constructed upon plans and specifications approved by the state engineer. No such headgate shall be deemed complete until provided with suitable lock or locks and fastenings therefor and keys thereof delivered to the water commissioner of the district, who shall have control thereof during the seasons of the distribution of water. If the owner or owners of any such irrigation ditch, canal, flume or reservoir, shall fail or neglect to erect or maintain in good repair, said headgate, measuring flume, weir or devices, in the manner and form herein provided, then the state engineer, division engineer, or water commissioner, upon ten days' previous notice in writing, duly served upon such owner or owners, or upon any agent or employe representing it to them or controlling such ditch, canal, flume or reservoir, shall refuse to deliver any water from such stream to such owner or owners, or to such ditch, canal, flume or reservoir, until such owner or owners shall cause to be erected or repaired the headgate, measuring flume, weirs or devices of such ditch, canal, flume or reservoir. The owner or owners of all such ditches, canals, flumes or reservoirs shall be liable for all damages resulting from their neglect or refusal to comply with the provisions of this act, and any such owner or owners who shall divert water from any such stream and into any such ditch, canal, flume or reservoir contrary to the orders of the state engineer, division engineer, or water commissioner, as herein provided, shall be deemed guilty of a misdemeanor

and, upon conviction thereof, shall be fined not to exceed five hundred dollars, and each day of violation shall be deemed a separate offense.

[See also section 3244.]

[Office of superintendent of irrigation abolished and division engineers provided in their place. See section 3335.]

Legislation. Sec. 3248. § 1 of Act of 1911 S. B. No. 134. Substitute for § 3248, which was § 1 of Act of 1901 p. 193, entitled:

AN ACT

In Relation to Irrigation; Prescribing Certain Penalties in Relation Thereto, and Defining Certain Duties of the State Engineer and Superintendents of Irrigation.

3249. Owner of ditch or reservoir transferring water must maintain headgate and weirs—Effect of failure.

SEC. 85. The owner or owners of any irrigation ditch, canal or reservoir, transferring water from one natural stream to another, or from a reservoir, ditch or flume to a stream in order that said water may be diverted from such stream for irrigation or any other purpose, shall construct suitable and proper measuring flumes or weirs, equipped with self registering devices, if required by the state engineer, for the proper and accurate determination of the amount and flow of water turned into, carried through and diverted out of said natural stream. If the owner or owners of any such irrigation ditch, canal or reservoir, shall fail or neglect, upon five days previous notice in writing duly served upon him or them, or his or their agent or employee, to erect, maintain or repair such measuring flume, weir or device, the state engineer or division engineer shall refuse to allow to be taken or diverted from any stream any water whatever on account of delivery of water to such stream, for such time and until such owner or owners shall cause to be erected or repair such flumes, weirs or devices, at the point of delivery to and taking from said natural streams so used as a conduit.

[See also section 3223.]

[See note, section 3248 as to superintendent of irrigation.]

Legislation. Sec. 3249. § 2 of Act of 1911 S. B. No. 134. Substitute for § 3249, which was § 2 of Act of 1901 p. 194, cited under § 3248.

3250. Rating tables furnished commissioners.

SEC. 86. The state engineer or division engineer shall rate the measuring flumes and weirs referred to in this act, and the original notes of such rating, together with a complete table compiled therefrom, shall be filed as a part of the records of the office of the state engineer, and the state engineer shall supply the division engineer of the division and the water commissioner of the district in which such measuring flumes or weirs are located, with a copy of such rating table, which shall be used by them in measuring water flowing to and from such natural stream.

[Sections 1 and 2 above referred to are sections 3248 and 3249.]
[See note, section 3248 as to superintendent of irrigation.]

Legislation. Sec. 3250. § 3 of Act of 1911 S. B. No. 134. Substitute for § 3250, which was § 3 of Act of 1901 p. 194, cited under § 3248.

3251. When water not to be stored in reservoirs—Gauge rod.

SEC. 87. The owners or possessors of reservoirs shall not have the right to impound any water in such reservoirs during the time that such water is required in senior ditches for immediate use for direct irrigation or for storage in reservoirs holding senior rights. A gauge rod, marked in feet and tenths and one-hundredths of a foot, shall be permanently fixed and maintained at the outlets of all reservoirs, under the supervision of the state engineer, and if any owner or possessor of any reservoir shall fail or refuse within thirty days after this act goes into effect, to provide, fix and maintain such gauge rod or rods, as aforesaid, then and in that event the owner or possessor of such reservoir shall not be entitled to impound any water whatever in said reservoir or reservoirs until the provisions of this section are fully complied with.

Legislation. Sec. 3251. § 4 of Act of 1911 S. B. No. 134. Substitute for § 3251, which was § 4 of Act of 1901 p. 194, cited under § 3248.

3252. Control of headgates and measuring weirs.

SEC. 88. All headgates, measuring weirs, flumes and devices used in connection with canals, flumes, ditches or reservoirs for the measuring and delivery of water therefrom and thereto, shall be under the supervision and control at all times of the state en-

gineer, the division engineer of the water division and the water commissioner of the water district wherein such headgates, measuring weirs, flumes and devices are located.

Legislation. Sec. 3252. § 5 of Act of 1911 S. B. No. 134. Substitute for § 3252, which was § 5 of Act of 1901 p. 196, cited under § 3248.

3253. Survey of reservoirs—Report—Gauge rods—Failure to comply.

SEC. 89. The owner or owners of any reservoir situate upon or in the bed of any natural stream or through which any natural stream flows, for the purpose of storing or diverting water, shall, at the expense of the owner or owners, cause a complete survey of the contour lines of said reservoir to be made, which said survey may be approved by the state engineer, or, in the discretion of the state engineer, shall be made under the supervision of the state engineer, or his deputy or the division engineer of the division in which such reservoir is located. Said contour lines shall be ascertained for at least every vertical foot in depth, and, in all cases where deemed necessary by the state engineer, for fractions of a foot. There shall be prepared a table to be filed in triplicate with, and approved by the state engineer, showing the capacity of said reservoir, in cubic feet, for each foot in depth or fraction thereof, one copy of which said table shall be furnished to the division engineer and one copy to the water commissioner in whose district such reservoir is situate. All maps, plats, field notes and the table of such reservoir, survey and capacity, shall be filed with and approved by the state engineer, and remain a part of the records of his office. The owner or owners of such reservoir shall, at their own expense, under the supervision and with the approval of the state engineer, permanently fix and maintain a gauge rod at or near the outlet of such reservoir, marked in feet and tenths and one-hundredths of a foot, and in correspondence with the contour lines, from and by means of which the amount of water stored in, or taken from, said reservoir may be correctly ascertained, and shall, at the expense of such owner or owners and under the supervision and with the approval of the state engineer, construct and permanently maintain a suitable and permanent measuring weir or flume equipped with self registering devices,

according to plans and specifications approved by the state engineer, in the bed and channel of every natural stream or water course discharging waters into said reservoir by means of which all of the water flowing into said reservoir from and through each such stream or water course, may at all times be definitely ascertained and determined. Such gauge rods, flumes or weirs, and devices, shall be at all times subject and open to inspection by the owner or duly authorized agent or representative of the owner or owners of any appropriation of water from the stream upon or in which such reservoir is constructed or operated.

Upon the failure or neglect of the owner or owners of any such reservoir to construct or permanently maintain such gauge rods, measuring flumes or weirs, equipped as herein provided; or upon failure or neglect of such owner or owners to cause complete survey of the contour lines of said reservoir to be made, after thirty days notice in writing, directing such contour survey to be made, duly served upon such owner or owners, or their agent or employee, by the state engineer or division engineer, the state engineer or division engineer shall refuse to allow any water whatsoever to be taken into or diverted from or by means of said reservoir; *Provided, however,* That when suitable weirs, flumes, gauge rods and measuring devices have been installed and equipped, as herein provided, the state engineer and division engineer may allow water to be stored in any such reservoir or reservoirs after thirty days having expired after the giving of said notice, in the event that the survey of said contour lines is then being prosecuted in good faith.

Upon complaint in any manner made to the state engineer or the division engineer by the owner or owners of any appropriation of water, from any stream upon which any such reservoir is located, or any stream of which such stream is a tributary, charging a violation of any of the requirements of this section, the state engineer or division engineer shall thereupon forthwith inquire into the truth of such complaint, and if the charges are found to be true, shall enforce the provisions and penalties of this section.

Legislation. Sec. 3253. § 6 of Act of 1911 S. B. No. 134. Substitute for § 3253, which was § 6 of Act of 1901 p. 195, cited under § 3248.

3254. Ditch owners provide flow on demand of users.

SEC. 90. Every person or company owning or controlling any canal or ditch used for the purposes of irrigation and carrying water for pay, shall, when demanded by the users during the time from April 1, until November 1, in each year, keep a flow of water therein, so far as may be reasonably practicable for the purpose of irrigation, sufficient to meet the requirements of all such persons as are properly entitled to the use of water therefrom, to the extent, if necessary, to which such person may be entitled to water, and no more; *Provided, however,* That whenever the rivers, or public streams or sources from which the water is obtained are not sufficiently free from ice, or the volume of water therein is too low and inadequate for that purpose, then such canal or ditch shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priorities from the streams or other sources, as provided by law, and the necessity of cleaning, repairing and maintaining the same in good condition.

Legislation. Sec. 3254. § 1 of Act 1893 p. 399, amending Act 1887 p. 304 § 1, entitled:

AN ACT

Regulating the Distribution of Water, the Superintendence of Canals or Ditches Used for the Purposes of Irrigation, and Providing a Penalty for the Violation Thereof.

CITATIONS.

The provision in a contract that if the ditch company refused to furnish the water the consumer might take it himself is void. This and secs. 3255-3258 cited.—*White v. Farmers' High Line C. Co.*, 22 C. 196, 43 P. 1030 (Affirming 5 A. 1, 31 P. 345).

Mandamus will lie to compel a ditch company to furnish water to a consumer who is entitled to it under a contract as well as when the right is conferred by statute.—*Peo. v. Farmers' High Line C. Co.*, 25 C. 212, 54 P. 626 (reversing 8 A. 246, 45 P. 543).

3255. Ditches to be kept in repair—Outlets.

SEC. 91. The owners, or persons in control, of any canal or ditch used for irrigating purposes, shall maintain the same in good order and repair, ready to receive water by April 15, in each year,

so far as can be accomplished by the exercise of reasonable care and diligence, and shall construct the necessary outlets in the banks of the canal or ditch for a proper delivery of the water to persons having paid up shares, or who have rights to the use of water; *Provided, however,* That a multiplicity of outlets in the canal or ditch shall at all times be avoided, so far as the same shall be reasonably practicable, and the location of the same shall be under the control of, and shall be at the most convenient and practicable points consistent with the protection and safety of the ditch for the distribution of water among the various claimants thereof; and such location shall be under the control of a superintendent.

[See also section 993.]

Legislation. Sec. 3255. Act 1887 p. 305 § 2, cited under § 3254.

CITATIONS.

Circumstances under which a consumer is entitled to compel the water company to construct necessary head gate.—*Downey v. Twin Lakes L. & W. Co.*, 41 C. 392, 92 P. 948.

3256. Measurement of water.

SEC. 92. It shall be the duty of those owning or controlling such canals or ditches, to appoint a superintendent, whose duty it shall be to measure the water from such canal or ditch through the outlets, to those entitled thereto according to his or her pro rata share.

Legislation. Sec. 3256. Act 1887 § 3, cited under § 3254.

3257. Penalty for refusal or neglect to deliver water.

SEC. 93. Any superintendent, or any person having charge of the said ditch, who shall wilfully neglect or refuse to deliver water, as in this act provided, or any person or persons who shall prevent or interfere with the proper delivery of water to the person or persons having the right thereto, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than ten nor more than one hundred dollars for each offense, or imprisonment not exceeding one month, or by both such fine and imprisonment; and the money thus collected shall be paid into the

general fund of the county in which the misdemeanor has been committed; and the owner or owners of such ditches shall be liable in damages to the person or persons deprived of the use of the water to which they were entitled as in this act provided.

Legislation. Sec. 3257. Act 1887 § 4, cited under § 3254.

3258. Water commissioner measure water—Failure.

SEC. 94. Any water commissioner, or his deputy, or assistant, who shall wilfully neglect or refuse, after being called upon in accordance with section 1758 of the General Statutes of the state, to promptly measure water from the stream, or other source of supply, into the irrigating canals or ditches, in his district, according to their respective priorities, to the extent to which water may be actually necessary for the irrigation of lands under such canals or ditches, shall be deemed guilty of a misdemeanor, and shall be subject to the same penalty as provided in section 4 of this act.

[G. S., section 1758 above referred to is section 3430.]

[Section 4 above referred to is section 3257.]

Legislation. Sec. 3258. Act 1887 § 5, cited under § 3254.

3259. Jurisdiction of justice of the peace.

SEC. 95. In all cases declared misdemeanors by this act, any justice of the peace of the county in which the offense was committed, may, upon complaint being made, as is now required by law, issue a warrant directed to any proper officer of the county for the arrest of any person so charged with any misdemeanor, and upon arrest of such person or persons, the justice of the peace before whom such person or persons may be brought for trial, shall hear and determine the cause and, if he find the accused guilty, shall assess the fine, and if imprisonment be a portion of the sentence, then to fix the term of imprisonment, or both, as provided in section 4 of this act; *Provided*, The accused may have a trial by jury which shall be summoned as in cases before justices of the peace for assault and battery.

[For summoning jury see section 3863.]

[Section 4 above referred to is section 3257.]

Legislation. Sec. 3259. Act 1887 § 6, cited under § 3254.

3260. No person to receive more water than he is entitled to.

SEC. 96. That it shall be the duty of every person, who is entitled to take water for irrigation purposes from any ditch, canal, or reservoir, to see that he receives no more water from such ditch, canal or reservoir through his headgate, or by any ways or means whatsoever, than he is entitled to, and that he shall, at all times, take every precaution to prevent more water than he is entitled to, coming from such ditch, canal, or reservoir, upon his land.

Legislation. Sec. 3260. Act 1887 p. 312 § 1, entitled:

AN ACT

To Provide for the Better Protection of Water Rights, and to Declare a Liability in Damages for the Infringement Thereof.

3261. Duty of party receiving more water than he is entitled to.

SEC. 97. That it shall be the duty of every such person, taking water from any ditch, canal, or reservoir, to be used for irrigation purposes, on finding that he is receiving more water from such ditch, canal or reservoir, either through his headgate, or by means of leaks, or by any means whatsoever, immediately to take steps to prevent his further receiving more water from such ditch, canal or reservoir, than he is entitled to, and if knowingly he permits such extra water to come upon his land, from such ditch, canal or reservoir, and does not immediately notify the owner or owners of such ditch, or take steps to prevent its further flowing upon his land, he shall be liable to any person, company or corporation, who may be injured by such extra appropriation of water, for the actual damage sustained by the party aggrieved: which damages shall be adjudged to be paid, together with the costs of suit, and a reasonable attorney's fee, to be fixed by the court and taxed with the costs.

Legislation. Sec. 3261. Act 1887 § 2, cited under § 3260.

III. RATE OF CHARGE FOR WATER.

Section.

- 3262. Regulating charges—Petition—Affidavits—Proceedings before commissioners.
- 3263. Powers and duties of commissioners—Hearing—Order—Existing contracts.
- 3264. Right to continue purchasing water—Stockholders—Rights.
- 3265. County commissioners hear and consider applications.
- 3266. Commissioners appoint day for hearing parties interested.
- 3267. Hearing—Order fixing date of hearing—Service of order.
- 3268. Hearing—Testimony—Commissioners fix maximum rate.
- 3269. False swearing.
- 3270. Repeal.
- 3271. Bonus deemed an extortionate rate—Recovery.
- 3272. Penalty for collecting excessive rate.
- 3273. Penalty for refusal to deliver water.
- 3274. Action when corporation refuses to deliver water.
- 3275. "Person" defined—Liability.

3262. Regulating charges—Petition—Affidavits—Proceedings before commissioners.

SEC. 98. The county commissioners of each county shall, at their regular January session in each year, hear and consider any and all applications which may be made to them by any party or parties interested in procuring water for irrigation by purchase from any ditch or reservoir furnishing and selling water, or proposing to furnish water for sale, the whole or upper part of which shall lie in such county, which application shall be supported by such affidavit or affidavits as the applicant may see proper to present, showing reasonable cause for such board to proceed to fix the price of water to be thereafter sold from such ditch or reservoir, and if such board of commissioners shall, upon examination of such affidavit or affidavits, or from the oaths of witnesses in addition thereto, find that the facts sworn to show the application to be in good faith, and that there is reasonable grounds to believe that unjust prices are, or are likely to be, charged for water from such ditch or reservoir, they shall enter an order fixing a day, not sooner than forty days thereafter, nor later than the third

[See also Constitution, article 16, section 8.]

day of the next regular session of their board, when they will hear all parties directly or indirectly interested in said ditch or reservoir, or in procuring water therefrom for irrigation, who may appear, as well as all testimony by witnesses, or depositions taken on notice as hereinafter provided, touching the said ditch or reservoir, and the cost of furnishing water therefrom, at which time all persons or corporations interested in said ditch or reservoir, as well as all interested in obtaining water therefrom, or in lands which may be irrigated therefrom, may appear by themselves, their agents, or attorneys, and said commissioners shall then proceed to take action in the matter of fixing such price of water, provided the applicant shall, within ten days from the time of entering such order, cause a copy thereof, duly certified, to be delivered to the owner of such ditch or reservoir, if it be owned by one person, or each of the owners, if it be owned by several persons, or to the president, secretary or treasurer of the company, if it belongs to a corporation or association having such officers, or if such owner cannot be found, he shall cause such copy to be left at his usual place of residence, with some person or member of his family residing there, and over fourteen years of age, and if such ditch officer cannot be found, he shall cause such copy to be left at the office or place of business of the company of which he is such officer, or at his residence, if such company have no place of business, and if such ditch is owned by several owners, not an incorporated company, it shall be sufficient to serve such notice by delivering one such copy each to a majority of them, and such applicant shall make affidavit of the manner in which such copy or copies have been served. Depositions mentioned in section one hereof, to be used before said commissioners, shall be taken before any officer in the state authorized by law to take depositions, upon reasonable notice being given to the opposite party of the time and place of taking such depositions.

[Section 1 above referred to is the above section.]

[For officers before whom depositions may be taken see Code, section 376, p. 140.]

[Sections 3262 and 3263 are doubtless superseded by sections 3265-3268.]

Legislation. Sec. 3262. G. S. § 1738. Act 1879 § 1, cited under § 3175. County commissioners fix price for water furnished by ditch companies. § 992.

CITATIONS.

The act of 1879 reviewed in an action to mandamus a district judge to make rules necessary for carrying out the intent of the act.—*Union Colony v. Elliott*, 5 C. 378.

Under the statute there is no appeal from a decision of the commissioners fixing the rate.—*Golden Canal Co. v. Bright*, 8 C. 147, 6 P. 143.

It is not necessary that all consumers using or seeking water should join in the application nor does the fixing a rate by the commissioners prevent making special contracts with the carrier.—*South Boulder D. Co. v. Marfell*, 15 C. 303, 25 P. 504.

An order of the commissioners prescribing rates cannot be collaterally assailed in a proceeding in mandamus brought to compel obedience to such order.—*Northern Colo. I. Co. v. Poupirt*, 47 C. 490, 108 P. 23.

3263. Powers and duties of commissioners—Hearing—Order—Existing contract.

SEC. 99. Said board shall hear and examine all legal testimony or proofs offered by any of the parties interested as before mentioned, as well concerning the value of the construction of such ditch or reservoir as the cost and expense of maintaining and operating the same, and all matters which may affect the just price and value of water to be furnished therefrom; and they shall have power to issue subpoenas to witnesses and compel their attendance, which subpoenas shall be served by the sheriff of the proper county when required; and also to compel the production of books and papers required for evidence in as full and ample a manner as the district court now has. They may adjourn the hearing from time to time to further the ends of justice or suit the general convenience of parties. Upon hearing and considering all the matters and facts involved in the case, the board of commissioners shall enter an order naming and describing the ditch or reservoir with sufficient certainty, and fixing a just price upon all water to be thereafter sold, which price shall not be thereafter changed oftener than once in two years; *Provided*, That no price so fixed shall affect the rights of parties, or their lawful assignees or grantees, who may have contracts with the company, association or person owning such ditch or reservoir, or their lessees, grantees or successors, nor the rights of such owners, lessees or grantees under

such contract, nor shall it in any way affect or hinder the making of such contract.

[See note section 3262.]

Legislation. Sec. 3263. G. S. § 1739. Act 1879 § 2, cited under § 3175.

CITATIONS.

The act of 1879 was passed in obedience to the command of sec. 8 art. XVI of the constitution.—*Golden Canal Co. v. Bright*, 8 C. 147, 6 P. 143.

Though the commissioners fix rates, special contracts may be made or consumers may continue under pre-existing contracts.—*South Boulder Co. v. Marfell*, 15 C. 303, 25 P. 504.

3264. Right to continue purchasing water—Stockholders—Rights.

SEC. 100. Any person or persons, acting jointly or severally, who shall have purchased and used water for irrigation for lands occupied by him, her or them, from any ditch or reservoir, and shall not have ceased to do so for the purpose or with intent to procure water from some other source of supply, shall have a right to continue to purchase water to the same amount for his, her or their lands, on paying or tendering the price thereof fixed by the county commissioners as above provided, or, if no price shall have been fixed by them, the price at which the owners of such ditch or reservoir may be then selling water, or did sell water during the then last preceding year. This section shall not apply to the case of those who may have taken water as stockholders or shareholders after they shall have sold or forfeited their shares or stock, unless they shall have retained a right to procure such water by contract, agreement or understanding, and use between themselves and the owners of such ditch, and not then to the injury of other purchasers of water from or shareholders in the same ditch.

Legislation. Sec. 3264. G. S. § 1740. Act 1879 § 3, cited under § 3175.

CITATIONS.

A prior purchaser is entitled to continue to purchase, although he may be able to obtain water from some other source.—*Golden Canal Co. v. Bright*, 8 C. 151, 6 P. 144.

This section does not operate to repeal sec. 992.—*Wheeler v. N. Colo. I. Co.*, 10 C. 595, 17 P. 493.

CITATIONS CONTINUED.

One who has used water is entitled to a preference over new applicants.—*N. Colo. I. Co. v. Richards*, 22 C. 456, 45 P. 426.

This and sec. 992 do not apply to individuals, where a ditch company is not concerned and where the question is whether a sheriff's deed includes a water right.—*Cooper v. Shannon*, 36 C. 106, 85 P. 178.

This section cited in an action to quiet title to water rights.—*Kimball v. N. Colo. I. Co.*, 42 C. 417, 94 P. 335.

3265. County commissioners hear and consider applications.

SEC. 101. The county commissioners of each county shall, at their regular sessions in each year, and at such other sessions as they in their discretion may deem proper, in view of the irrigation and harvesting season, and the convenience of all parties interested, hear and consider all applications which may be made to them by any party or parties interested, either in furnishing and delivering for compensation in any manner, or in procuring for such compensation, water for irrigation, mining, milling, manufacturing, or domestic purposes, from any ditch, canal, conduit, or reservoir, the whole or any part of which shall lie in such county. Which application shall be supported by such affidavits as the applicant or applicants may present, showing reasonable cause for such board of county commissioners to proceed to fix a reasonable maximum rate of compensation for water to be thereafter delivered from such ditch, canal, conduit, or reservoir, within such county.

[Sections 3265-3268 doubtless supersede sections 3262 and 3263.]

Legislation. Sec. 3265. Act 1887 p. 291 § 1, entitled:

AN ACT

To Regulate the Mode of Fixing the Rates of Compensation by Boards of County Commissioners, for Water Furnished and Delivered for Irrigation and Other Lawful Purposes, from Ditches, Canals, Conduits and Reservoirs; and to Repeal Laws Inconsistent Therewith, and Punish Offenses Contrary Thereto.

CITATIONS.

Prior to 1887 the statute did not authorize the commissioners to establish a maximum rate if the head of the canal was in another county.—*Wheeler v. N. Colo. I Co.*, 10 C. 583, 17 P. 487.

Facts under which a water company was not precluded from

CITATIONS CONTINUED.

bringing an action to restrain enforcement of rate fixed—unjust enforcement of rate may be enjoined.—*Montezuma County v. Montezuma Water Co.*, 39 C. 170, 172, 89 P. 795.

3266. Commissioners appoint day for hearing parties interested.

SEC. 102. Every such board of commissioners shall, upon examination of such affidavit or affidavits, or from the oaths of witnesses in addition thereto, if they find that the facts sworn to show the application to be in good faith, and that there are reasonable grounds to believe that unjust rates of compensation are, or are likely to be, charged or demanded for water from such ditch, canal, conduit, or reservoir, shall enter an order fixing a day not sooner than twenty days thereafter, nor later than the third day of the next regular session of their board, when they will hear all parties interested in such ditch, or other waterworks as aforesaid, or in procuring water therefrom, for any of the said uses, as well as all documentary or oral evidence or depositions, taken according to law, touching the said ditch, or other work as aforesaid, and the cost of furnishing water therefrom.

Legislation. Sec. 3266. Act 1887 § 2, cited under § 3265.

3267. Hearing—Order fixing date of hearing—Service of order.

SEC. 103. At the time so fixed, all persons interested as aforesaid, on either side of the controversy, in lands which may be irrigated from such ditch, or other work aforesaid, may appear by themselves, their agents, or attorneys, and said commissioners shall then proceed to take action in the matter of fixing such rates of compensation for the delivery of water: *Provided*, The applicant or applicants (if the application be made by a party or parties as aforesaid desirous of procuring water), shall, within ten days from the time of entering the said order fixing the hearing, cause a copy of such order, duly certified, to be delivered to the owner, or owners, of such ditch, canal, conduit, or reservoir, or to the president, secretary, or treasurer of the com-

pany, if it be owned by a corporation or association having such officers. If any such owner cannot be found, a copy shall be left at his usual place of abode, with some person residing there, over twelve years of age; and if such officer of any corporation or association cannot be found, such copy shall be left at the usual place of business of the company of which he is such officer, or at his residence if such company have no place of business; and if such ditch, or other work aforesaid, shall be owned by several owners not being an incorporated company, it shall be sufficient to serve notice by delivering copies to a majority of them. If the applicant be the owner or party controlling such ditch, canal, conduit, or reservoir, such notice shall be given by causing printed copies of such order in hand bill form, in conspicuous type, to be posted securely in ten or more public places throughout the district watered from such ditch, or other work aforesaid (if the water be used for irrigation), and one copy shall be posted for every mile in length of such ditch; but if such ditch, or other work, be for the supply of water for milling or mining, it shall be sufficient to serve such copy on the parties then taking water therefrom. The person or persons making such service or posting such printed copies, shall make affidavit of the manner in which the same has been done, which affidavit shall be filed with the said board of county commissioners. Depositions mentioned in section 2 hereof, to be used before said commissioners, shall be taken before any officer in the state authorized by law to take depositions, upon reasonable notice being given to the opposite party of the time and place of taking the same.

[Section 2 referred to is section 3266.]

[Officers before whom depositions may be taken, Code, section 376, p. 140.]

Legislation. Sec. 3267. Act 1887 § 3, cited under § 3265.

3268. Hearing — Testimony — Commissioners fix maximum rate.

SEC. 104. Said board of commissioners may adjourn or postpone any hearing from time to time as may be found necessary, or for the convenience of parties, or of public business; and they shall hear and examine all legal testimony or proofs offered by

any party interested as aforesaid, as well concerning the original cost and present value of works and structure of such ditch, canal, conduit or reservoir, as the cost and expense of maintaining and operating the same, and all matters which may affect the establishing of a reasonable maximum rate of compensation for water to be furnished and delivered therefrom; and they may issue subpoenas for witnesses, which subpoenas shall be served by the sheriff of the county, who shall receive the lawful fees for all such service; and said board may also issue a subpoena for the production of all books and papers required for evidence before them. Upon hearing and considering all the evidence and facts, and matters involved in the case, said board of commissioners shall enter an order describing the ditch, canal, conduit, reservoir, or other work in question, with sufficient certainty and fixing a just and reasonable maximum rate of compensation for water to be thereafter delivered from such ditch or other work as last aforesaid, within the county in which such commissioners act, and such rate shall not be charged within two years from the time when they shall be so fixed, unless upon good cause shown. The district court of the proper county, or the judge thereof in vacation, may, in case of refusal to obey the subpoena of the board of county commissioners, compel obedience thereto, or punish for refusal to obey, after hearing, as in cases of attachment, for contempt of such district court.

[Doubtless word "charged" in line 18, above, should read "changed."]

Legislation. Sec. 3268. Act 1887 § 4, cited under § 3265.

CITATIONS.

The matter of fixing maximum rates was germane to the title of the act of 1879.—*Golden Canal Co. v. Bright*, 8 C. 147, 6 P. 143.

There is no provision in the statute requiring application to the commissioners for a modification of an order fixing rates.—Enforcement of unjust rate may be enjoined.—*Montezuma County v. Montezuma Water Co.*, 39 C. 170, 89 P. 795.

3269. False swearing.

SEC. 105. Every person who shall swear or affirm falsely in any matter, or testify falsely after being duly sworn or having affirmed as a witness in any proceeding provided for in this act,

shall be deemed guilty of perjury, and on conviction shall be punished accordingly.

[Punishment for perjury. Section 1716.]

Legislation. Sec. 3269. Act 1887 § 5, cited under § 3265.

3270. Repeal.

SEC. 106. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but such repeal shall not work any interference with any proceeding by any board of county commissioners now pending, saving that any such proceeding may, at the request of either party, be carried on to completion under the provisions hereof.

[Does this repeal sections 3262-3264?]

Legislation. Sec. 3270. Act 1887 § 6, cited under § 3265.

The text is the repealing section of the 1887 Act, now §§ 3265-3269, which undoubtedly supersede §§ 3262 and 3263, but do not apparently affect § 3264.

3271. Bonus deemed an extortionate rate—Recovery.

SEC. 107. It shall not be lawful for any person owning, or controlling, or claiming to own or control any ditch, canal or reservoir, carrying or storing, or designed for the carrying or storing of any water taken from any natural stream or lake within this state, to be furnished or delivered for compensation for irrigation, mining, milling or domestic purposes, to persons not interested in such ownership or control, to demand, bargain for, accept or receive from any person who may apply for water for any of the aforesaid purposes, any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus, or premium prerequisite or condition precedent to the right or privilege of applying, or bargaining for, or procuring such water. But such water shall be furnished, carried and delivered upon payment or tender of the charges fixed by the county commissioners of the proper county, as is, or may be, provided by law. Any and all moneys, and every valuable thing, or consideration of whatsoever kind, which shall be so, as aforesaid, demanded, charged, bargained for, accepted, received, or retained, contrary to the provisions of this section, shall be

deemed and held an additional and corrupt rate, charge, or consideration for the water intended to be furnished and delivered therefor, or because thereof, and wholly extortionate and illegal; and when paid, delivered, or surrendered, may be recovered back by the party paying, delivering, or surrendering the same from the party to whom, or for whose use, the same shall have been paid, delivered, or surrendered, together with costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any court having jurisdiction.

Legislation. Sec. 3271. Act 1887 p. 308 § 1, entitled:

AN ACT

To Define, Prohibit, Punish and Restrain Extortion and Other Abuses in the Management of Ditches, Canals and Reservoirs.

Secs. 3271-3275 were originally known as the Anti-royalty Act.

CITATIONS.

This act is penal. Demanding a bonus is unlawful. The act in no way impairs the rights of consumers under sec. 3264.—*N. Colo. I. Co. v. Richards*, 22 C. 456, 45 P. 426.

This section referred to in a prosecution under sec. 3273.—*Schneider v. Peo.*, 30 C. 494, 71 P. 369.

3272. Penalty for collecting excessive rate.

SEC. 108. Every person owning or controlling, or claiming to own or control, any ditch, canal or reservoir, such as is mentioned in the first section of this act, who shall, after demand in writing made upon him for the supply or delivery of water for irrigation, mining, milling or domestic purposes, to be delivered from the canal, ditch or reservoir, owned, possessed or controlled by him, and after tender of the lawful rate of compensation therefor, in lawful money, demand, require, bargain for, accept, receive or retain from the party making such application, any money or other thing of value, or any promise or contract, or any valuable consideration whatever, as such royalty, bonus, premium, prerequisite or condition precedent, as is by the provisions of this said first section prohibited, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five thousand

dollars, or imprisonment for a term not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the court.

[Section 1 referred to above is section 3171.]

Legislation. Sec. 3272. Act 1887 § 2, cited under § 3271.

3273. Penalty for refusal to deliver water.

SEC. 109. Every person owning or controlling, or claiming to own or control, any ditch, canal or reservoir, such as is mentioned in the first section of this act, who shall, after demand in writing, made upon him for the supply or delivery of water for irrigation, mining, milling or domestic purposes, to be delivered from the canal, ditch or reservoir, owned, possessed or controlled by him, and after tender of the lawful rate of compensation therefor, in lawful money, refuse to furnish or carry and deliver from such ditch, canal or reservoir, any water so applied for, which water can or may be by use of reasonable diligence in that behalf, and within the carrying or storage capacity of such ditch, canal or reservoir, be lawfully furnished and delivered, without infringement of prior rights, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five thousand dollars, or imprisonment for a term of not less than three months, nor more than one year, or both such fine and imprisonment, in the discretion of the court.

[Section 1 referred to above is section 3271.]

[When ditch company must furnish water. Section 992.]

Legislation. Sec. 3273. Act 1887 § 3, cited under § 3271.

CITATIONS.

An information which charges the offense simply in the language of this section is insufficient.—*Schneider v. Peo.*, 30 C. 494, 71 P. 369.

3274. Action when corporation refuses to deliver water.

SEC. 110. When any corporation, in defiance or by attempted evasion of the provisions of this act, shall, after tender of the compensation hereinbefore provided for, refuse to deliver water,

such as is mentioned in the third section of this act, to any person lawfully entitled to apply therefor, it shall be the duty of the attorney general, upon request of the county commissioners of the proper county, or upon his otherwise receiving due notice thereof, to institute and prosecute to judgment and final determination, proceedings in quo warranto, for the forfeiture of the corporate rights, privileges and franchises of any such corporation so offending, or by mandamus or other proper proceedings to compel it to its duty in that behalf.

[Section 3 referred to above is section 3273.]

Legislation. Sec. 3274. Act 1887 § 4, cited under § 3271.

3275. "Person" defined—Liability.

SEC. 111. The word "Person," as used in this act, shall include corporations and associations, and the plural as well as the singular number. And every officer of a corporation, or member of an association, or co-ownership, and every agent violating any of the provisions of this act, shall be liable to restore the unlawful consideration extorted, and be punishable under the penal provisions of this act, the same as if the thing done in disobedience to its provisions were done for his own sole benefit and advantage.

Legislation. Sec. 3275. Act 1887 § 5, cited under § 3271.

IV. ADJUDICATION OF PRIORITIES.

- A. PROCEEDINGS BEFORE COURT.—3276-3290.
- B. PROCEEDINGS BEFORE REFEREE.—3291-3306.
- C. APPEALS.—3307-3312.
- D. GENERAL PROVISIONS.—3313-3320.

A. PROCEEDINGS BEFORE COURT.

Section.

- 3276. Adjudication of irrigation priorities—Jurisdiction of court.
- 3277. Filing statement of claim—Contents.
- 3278. Secretary of state make publication—Publisher's certificate.
- 3279. Secretary's certificate—Where filed—Effect.
- 3280. Adjudication of priorities other than irrigation—Petition.
- 3281. Court number water rights.

A. PROCEEDINGS BEFORE COURT.

*Continued.***Section.**

- 3282. Protection of vested rights.
 - 3283. Distribution by water commissioner.
 - 3284. Petition to adjudicate—Order—Hearing—Decree—Certificate by clerk.
 - 3285. Copy of decree—Authority of commissioner—Recording—Copy—Evidence.
 - 3286. Clerk publish notice—Copies posted.
 - 3287. Proof of publication and posting copies—Entry by clerk.
 - 3288. Notice served on all parties—How served—Notice by mail.
 - 3289. After decree entered no further publication required in subsequent proceedings, unless.
 - 3290. Court number all ditches and reservoirs—Number appropriations.
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3276. Adjudication of irrigation priorities—Jurisdiction of courts.

SEC. 112. For the purpose of hearing, adjudicating and settling all questions concerning the priority of appropriation of water between ditch companies and other owners of ditches drawing water for irrigation purposes from the same stream or its tributaries within the same water district, and all other questions of law and questions of right growing out of or in any way involved or connected therewith, jurisdiction is hereby vested exclusively in the district court of the proper county; but when any water district shall extend into two or more counties, the district court of the county in which the first regular term after the first day of December in each year shall soonest occur, according to the law then in force, shall be the proper court in which the proceedings for said purpose, as hereinafter provided for, shall be commenced; but where said proceedings shall be once commenced, by the entry of an order appointing a referee in the manner and for the purpose hereinafter in this act provided, such court shall thereafter retain exclusive jurisdiction of the whole subject until final adjudication thereof is had, notwithstanding any law to the contrary now in force.

(Adjudication of priorities other than irrigation. Section 3280.)

Legislation. Sec. 3276. Act 1879 p. 99 § 19, cited under § 3175. G. S. § 1762.

The act of 1879 so far as it relates to the adjudication of priorities was supplemented by Act 1881 p. 142 and the revising commissioner doubtless correctly treated all the priority sections of the 1879 act as substituted by those of the later act.

CITATIONS.

The acts of 1879 and 1881 provide a system of procedure for determining priorities for irrigation and can not be resorted to for determining claims for the use of water not fairly within the term "irrigation."—*Platte W. Co. v. N. Colo. I. Co.*, 12 C. 529, 21 P. 712.

Awarding priorities in excess of amount of water actually appropriated is error. A promise to use in the future will not support such a decree.—*Fort Morgan L. Co. v. South Platte D. Co.*, 18 C. 3, 30 P. 1033.

Decrees rendered under the acts of 1879 and 1881 are not intended to designate the persons entitled to the use.—*Oppenlander v. Left Hand D. Co.*, 18 C. 147, 31 P. 856.

The proceeding is *sui generis* to which the rules governing ordinary civil actions are not always applicable. Adjudication of priorities limited to the district. Effect of dividing a district as to jurisdiction of court.—*Sterling I. Co. v. Downer*, 19 C. 598, 36 P. 787.

After expiration of time limited a decree is not to be reopened for any material change.—*New Mercer D. Co. v. Armstrong*, 21 C. 357, 40 P. 989.

The court first acquiring jurisdiction will retain it throughout.—*Louden Canal Co. v. Handy Ditch Co.*, 22 C. 105, 114, 43 P. 538. *Presbyterian College v. Poole*, 25 C. 52, 52 P. 1103. *Handy Ditch Co. v. South Side Co.*, 26 C. 335, 58 P. 31.

Under the acts of 1879, 1881 and 1883 a ditch company may have a priority determined. Certain fundamental principles stated.—*Farmers Ind. D. Co. v. Agr. D. Co.*, 22 C. 522, 45 P. 444. (Reversing 3 A. 255, 32 P. 722).

The district court has no authority to give any definite decree in favor of a ditch not then completed.—*Water S. & S. Co. v. Tenney*, 24 C. 344, 51 P. 505.

The courts cannot award priorities to a ditch intended to water lands outside the state although the ditch has its head gate within the state.—*Lamson v. Vailes*, 27 C. 203, 61 P. 232.

A party to a proceeding may not subsequently question the courts jurisdiction on the ground that another court had acquired jurisdiction.—*Cons. Home Co. v. New Loveland Co.*, 27 C. 522, 62 P. 365.

CITATIONS CONTINUED.

As between parties to a decree another court has no jurisdiction in an ordinary civil action to review such decree or to pass upon questions of priority between the parties.—*Id.*

Of what facts a decree is prima facie evidence. Pleading decree.—*Medano Ditch Co. v. Adams*, 29 C. 317, 68 P. 431.

An action to protect water rights may be brought in any county without regard to the county in which the adjudication was first had.—*Id. Buckers I. Co. v. Farmers D. Co.*, 31 C. 73, 72 P. 52.

A stranger to a void judgment may maintain an action to have it canceled as to him.—*Orippen v. X. Y. I. Co.*, 32 C. 448, 76 P. 794.

In an action to restrain diversion of water the question of abandonment of decree rights considered.—*Central Trust Co. v. Culver*, 35 C. 93, 83 P. 1064. *Alamosa Creek C. Co. v. Nelson*, 42 C. 140, 93 P. 1112.

Except as provided by statute or in case of fraud, decrees are conclusive upon the parties thereto.—*Farmers' U. D. Co. v. Rio Grande C. Co.*, 37 C. 515, 86 P. 1042. *Kerr v. Burns*, 42 C. 292, 93 P. 1120. *Laguna C. Co. v. Rocky Ford D. Co.*, 42 C. 522, 95 P. 287.

The statutes do not contemplate a determination as between themselves, of the rights of different owners, to any particular quantity of water.—*Evans v. Swan*, 38 C. 92, 88 P. 149.

The irrigation statutes are in the nature of police regulations and provide a system of procedure for determining the priorities as between carriers. Conclusiveness of and persons concluded by a decree.—*Combs v. Farmers High Line Co.*, 38 C. 425, 88 P. 398.

This section cited in a proceeding to change the point of diversion, on the question of insufficient notice.—*Wadsworth D. Co. v. Brown*, 39 C. 66, 88 P. 1062.

Decrees are not intended to designate the person entitled to the use of water. Priorities of an original canal from an extension thereof and relative rights of the consumers.—*O'Neil v. Ft. Lyons C. Co.*, 39 C. 487, 90 P. 849. *Rollins v. Fearnieu* 45 C. 319, 101 P. 345.

Construction of a decree which was both absolute and interlocutory, conditioned upon subsequent cultivation of land.—*Crawford Clipper D. Co. v. Needle Rock D. Co.* (April 1911), 114 P. 655.

3277. Filing statements of claim—Contents.

Sec. 113. In order that all parties may be protected in their

lawful rights to the use of water for irrigation, every person, association or corporation owning or claiming any interest in any ditch, canal or reservoir, within any water district, shall, on or before the first day of June, A. D. 1881, file with the clerk of the district court having jurisdiction of priority of right to the use of water for irrigation in such water district, a statement of claim, under oath, entitled of the proper court, and in the matter of priorities of water rights in district number —, as the case may be, which statement shall contain the name or names, together with the post-office address of the claimant or claimants claiming ownership, as aforesaid, of any such ditch, canal or reservoir, the name thereof (if any), and, if without a name, the owner or owners shall choose and adopt a name, to be therein stated, by which such ditch, canal or reservoir shall thereafter be known, the description of such ditch, canal or reservoir as to location of headgate, general course of ditch, the name of the natural stream from which such ditch, canal or reservoir draws its supply of water, the length, width, depth and grade thereof, as near as may be, the time, fixing a day, month and year as the date of the appropriation of water by original construction, also by any enlargement or extension, if any such thereof may have been made, and the amount of water claimed by or under such construction, enlargement or extension, and the present capacity of the ditch canal or feeder of reservoir, and also the number of acres of land lying under and being or proposed to be irrigated by water from such ditch, canal or reservoir. Said statement shall be signed by the proper party or parties.

[Claim must be filed before party can offer evidence, see section 3316.]

Legislation. Sec. 3277. G. S. § 1763. Act 1881 p. 142 § 1, entitled:

AN ACT

To Make Further Provisions for Settling the Priority of Rights to the Use of Water for Irrigation, in the District and Supreme Courts, and for Making Record of Such Priorities, and for Payment of Costs and Expenses Incident Thereto.

CITATIONS.

This section cited in an action construing the pro-rate act—*Farmers High Line Co. v. Southworth*, 13 C. 134, 138, 21 P. 1031.

Failure to file claim, or apply for review under sec. 3318 does

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not bar action under sec. 3313.—*Greer v. Heiser*, 16 C. 309, 26 P. 770.

This section cited in holding that the court first acquiring jurisdiction retains it throughout.—*Louden I. Co. v. Handy Ditch Co.*, 22 C. 108, 43 P. 539.

A failure to file the claim under this section in no way precluded filing the same in a proceeding under sec. 3284.—*Broadmoor D. Co. v. Brookside W. Co.*, 24 C. 545, 52 P. 792.

Rights which depended upon a compliance with the requirements of the so-called map and statement statute which had been held unconstitutional could not be enforced as against superior rights notwithstanding rights had been adjudicated upon the assumption that the statute was valid.—*Great Plains W. Co. v. Lamar C. Co.*, 31 C. 96, 71 P. 1119.

This section cited in considering the conclusiveness of and the persons concluded by a decree.—*Combs v. Farmers' High Line Co.*, 38 C. 426, 88 P. 398.

Parties to an adjudication in one district are bound to take notice of the rights adjudicated in other districts on the same stream.—*Ft. Lyon C. Co. v. Ark. Valley etc. Co.*, 39 C. 338, 90 P. 1026.

This and secs. 3284 and 3290 contemplate that rights for reservoirs may be adjudicated.—*Gunnison County v. Hider*, 47 C. 445, 107 P. 1069.

3278. Secretary of state make publication—Publisher's Certificate.

SEC. 114. The secretary of state shall, without delay, after the passage of this act, cause a certified copy of the foregoing section, giving the date of the approval of this act, to be published in one of the public newspapers published in such county in which part or portion of any water district is or shall be established by law at the time of such publication; and said section one shall be published as aforesaid, once in each and every week continuously in said paper until said first day of June, A. D. 1881, and in case in the meantime any one of said papers shall cease to be published, then such publication shall be made in some other paper in same county, (if any), and on conclusion of such publication such publisher of such paper shall deliver to the secretary of state his sworn certificate of publication in duplicate showing that such publica-

tion has been made in his paper in compliance with the preceding section hereof, and stating the first and last day of such publication; and he shall thereupon be entitled to receive from the secretary of state a certificate of the amount due him for such publication, on presentation of which to the auditor of state he shall draw his warrant for the amount in favor of the holder on the state treasurer, who shall pay the same according to law.

[Section 1 referred to above is section 3277.]

Legislation. Sec. 3278. G. S. § 1704. Act 1881 § 2, cited under § 3277.

CITATIONS.

The fact that section 3277 was not published as directed in this section does not affect the jurisdiction of the courts.—*Broadmoor D. Co v. Brookside W. Co.*, 24 C. 543-545, 52 P. 792.

This section cited in an action considering the object of the proceeding and the conclusiveness of a decree.—*Combs v. Farmers' High Line Co.*, 38 C. 426, 88 P. 398.

3279. Secretary's certificate—Where filed—Effect.

SEC. 115. The secretary of state shall file one of said duplicate certificates of publication with the clerk of the district court having jurisdiction of priority of rights to use of water for irrigation in the proper water district, certifying officially that such publication therein mentioned was duly authorized by him, and said clerk shall file the same with the statement of claim provided for in section one hereof, and such certificate of such publisher or any additional certificate of same publisher to same fact in case of loss of the original, shall be proof of the proper publication of said section in the paper therein mentioned. Said secretary of state shall also certify to such clerk of the several district courts having jurisdiction of said priorities of right to use of said water for irrigation throughout the state, the names of the newspapers, and of the county in which he caused such publication to be made, and that the duplicate certificate of publication of the publisher, as herein required are on file in his office, and said certificate shall be sufficient proof of the publication of said section one hereof, as by this act required.

[Section 1 referred to above is section 3277.]

Legislation. Sec. 3279. G. S. § 1765. Act 1881 § 3, cited under § 3277.

3280. Adjudication of priorities other than irrigation—Petition.

SEC. 116. That the owner or owners of any water rights derived from any natural stream, water-course or any other source, acquired by appropriation and used for any beneficial purpose other than irrigation, may have his or their right thereto established and decreed by the district court having jurisdiction of the adjudication of water rights for irrigation purposes in the water district in which said water rights are situated, by petitioning said court in the same manner and by complying with the procedure and the requirements of the law now applicable to the adjudication of water rights for irrigation purposes.

[Adjudication of priorities for irrigation. Section 3276.]

Legislation. Sec. 3280. Act 1903 p. 297 § 1, entitled:

AN ACT

Concerning Water Rights.

CITATIONS.

The regulations of secs. 3307-3310 concerning appeal from a judgment under this section, are mandatory and can not be waived.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3281. Court number water rights.

SEC. 117. The said district court shall number, consecutively and chronologically, all such water rights similar to the system of numbering priorities for irrigation purposes, designating the amount of each appropriation in cubic feet per second of time; and shall specifically state the particular purpose for which said appropriation is granted, that is, whether the same is for power or manufacturing purposes, domestic use, storage purposes, or any other beneficial use of said waters. All of such appropriations, other than appropriations for irrigation purposes, shall be designated by and in the one series of consecutive numbers herein provided for.

Legislation. Sec. 3281. Act 1903 § 2, cited under § 3280.

3282. Protection of vested rights.

SEC. 118. In determining such water rights, it shall be the

duty of the court to recognize and protect, as far as possible under the constitution of this state and the decisions of the appellate courts applicable thereto, the vested rights of all appropriations of water for irrigation purposes, especially where such rights have been duly adjudicated by the said court in the statutory proceedings for the determination of the priority of rights to the use of water for irrigation purposes.

Legislation. Sec. 3282. Act 1903 § 3, cited under § 3280.

3283. Distribution by water commissioner.

SEC. 119. It shall be the duty of the water commissioner in each water district to distribute the waters decreed hereunder and to protect the priority rights of the respective owners of water rights for any beneficial purposes from and after their determination by said court, in the same manner as he is now required by law to superintend the distribution of waters throughout his district for irrigation purposes, and he shall receive like compensation for such services from the county in which such water rights are situated; and other counties embraced in his water district shall not be liable for any portion of such service; *Provided, further,* That no water commissioner or irrigation official shall make any division or distribution of any water between the users thereof from the same ditch or reservoir.

Legislation. Sec. 3283. Act 1903 § 4, cited under § 3280.

3284. Petition to adjudicate—Order—Hearing—Decree—Certificate by clerk.

SEC. 120. When, at any time after the first day of June, A. D. 1881, any one or more persons, associations or corporations, interested as owners of any ditch, canal or reservoir in any water district shall present to the district court of any county having jurisdiction of priority of rights to the use of water for irrigation in such water district according to the provisions of an act entitled "An act to regulate the use of water for irrigation and providing for settling the priority of rights thereto, and for payment of the

expenses thereof, and for payment of all costs and expenses incident to said regulation of use," or to the judge thereof in vacation, a motion, petition or application in writing, moving or praying said court to proceed to an adjudication of the priorities of rights to use of water for irrigation between the several ditches, canals and reservoirs in such district, the court, or judge thereof in vacation, shall, without unnecessary delay, in case he shall deem it practicable to proceed in open court, as prayed for, by an order to be entered of record upon such motion, petition or application, **appoint a day**, in some regular or special term of said court, for commencing to hear and take evidence in such adjudication, at which time it shall be the duty of the court to proceed to hear all evidence which may be offered by or on behalf of any person, association or corporation, interested in any ditch, canal or reservoir, in such district, either as owner or consumer of water therefrom in support of or against any claim or claims of priority of appropriation of water made by means of any ditch, canal or reservoir, or by any enlargement or extension thereof in such district, and consider all such evidence, together with any and all evidence, if any, which may have been heretofore offered and taken in such district in the same manner by any referee heretofore appointed under the provisions of said act above herein mentioned, and also the arguments of parties or their counsel, and shall ascertain and find from such evidence, as near as may be, the date of the commencement of such ditch, canal or reservoir, together with the original size and carrying capacity thereof as originally constructed, the time of the commencement of each enlargement or extension thereof, if any, with the increased capacity thereby occasioned, the time spent, severally, in such construction and enlargement, or extension, and re-enlargement, if any, the diligence with which the work was in each case prosecuted, the nature of the work as to difficulty of construction, and all such other facts as may tend to show the compliance with the law, in acquiring the priority of right claimed for each such ditch, canal or reservoir, and determine the matters put in evidence, and make and cause to be entered a decree determining and establishing the several priorities of right, by appropriation of water, of the several ditches, canals and reservoirs in such water district,

concerning which testimony shall have been offered, each according to the time of its said construction and enlargement, or enlargements or extensions, with the amount of water which shall be held to have been appropriated by such construction and enlargements, or extensions, describing such amount by cubic feet per second of time, if the evidence shall show sufficient data to ascertain such cubic feet, and if not, by width, depth and grade and such other description as will most certainly and conveniently show the amount of water intended as the capacity of such ditch, canal or reservoir, in such decree. Said court shall further order that each and every party interested or claiming any such ditch, canal or reservoir, shall receive from the clerk, on payment of a reasonable fee therefor, to be fixed by the court, a certificate under seal of the court showing the date or dates and amount or amounts of appropriations adjudged in favor of such ditch, canal or reservoir, under and by virtue of the construction, extension and enlargements thereof, severally; also specifying the number of said ditch and of each priority to which the same may be entitled by reason of such construction, extension and enlargements.

[The act above referred to is found L. '79, p. 95-108.]

Legislation. Sec. 3284. G. S. § 1766. Act 1881 p. 144 § 4, cited under § 3277.

CITATIONS.

The acts of 1879 and 1881 cannot be resorted to for the determination of claims not fairly included in the term "irrigation."—*Platte Water Co. v. Northern Colo. I. Co.*, 12 C. 529, 21 P. 711.

The acts of 1879 and 1881 cited in an action concerning priorities of consumers through the same ditch.—*Farmers' High Line Co. v. Southworth*, 13 C. 123, 134-138, 21 P. 1031.

The statutory proceeding to adjudicate priorities is a proceeding sui generis to which the rules governing ordinary civil actions are not always applicable.—*Sterling I. Co. v. Downer*, 19 C. 598, 36 P. 787.

After an adjudication by a court of one county the court of another county cannot entertain jurisdiction.—*Louden Canal Co. v. Handy Ditch Co.*, 22 C. 108, 43 P. 538.

Where reasonable diligence is used priority should date from the time of beginning and not from the completion of the work.—*Water S. & S. Co. v. Larimer & W. I. Co.*, 24 C. 325, 51 P. 496.

Where a conditional decree determined the carrying capacity

CITATIONS CONTINUED.

of an enlargement of a ditch without actual appropriation and afterwards a supplemental decree recited completion of the work, held that the two decrees taken together constituted the decree.—*Id.* 327, 329.

The failure to file the claim required by sec. 3277 does not preclude the right to file the same in proceedings under this section. Sufficiency of description and statements in a decree.—*Broadmoor D. Co. v. Brookside W. Co.*, 24 C. 545, 52 P. 794.

In this and section 3276 adjudication is limited to ditches etc. used for irrigating lands in this state only.—*Lamson v. Vailes*, 27 C. 203, 61 P. 232.

A decree of priority for an irrigating ditch gives no priority to water during the non-irrigating season for the purpose of storage. The priority for storage depends upon the time of appropriation for that purpose.—*New Loveland Co. v. Cons. Home Co.*, 27 C. 531, 62 P. 368.

A conditional decree is erroneous but is not subject to collateral attack. Failure of a decree to number the ditches is merely an irregularity.—*Lake Fork D. Co. v. Haley*, 28 C. 517, 67 P. 158.

This section cited in holding that interference with a water commissioner is not contempt of court or disobedience of a decree of priority.—*Roberson v. Peo.*, 40 C. 123, 90 P. 80.

Before a reservoir decree is entered it should appear that an appropriation of a certain quantity of water has been made. Awarding two separate reservoir priorities of the same date and capacity. Filling same reservoir twice in the same year. Two appropriations for same reservoir at different dates.—*Windsor R. & C. Co. v. Lake Supply D. Co.*, 44 C. 217, 223, 98 P. 731.

The court has no jurisdiction in a statutory proceeding to determine disputes between claimants under the same ditch.—*Park v. Park*, 45 C. 355, 101 P. 406. *Putnam v. Curtis*, 7 A. 438, 43 P. 1056.

This and secs. 3277 and 3290 contemplate that rights to water for reservoirs may be adjudicated.—*Gunnison County v. Hider*, 47 C. 445, 107 P. 1069.

3285. Copy of decree—Authority of commissioner—Recording—Copy—Evidence.

SEC. 121. The holder of such certificate shall exhibit the same to the water commissioner of the district when he commences the exercise of his duties, and such water commissioner shall keep a book in which shall be entered a brief statement of the contents

of such certificate, and which shall be delivered to his successor, and said certificate, or statement thereof, in his book, shall be the warrant of authority to said water commissioner for regulating the flow of water in relation to such ditch, canal or reservoir. Said certificate shall be recorded, at the same rates of charges as in cases of deeds of conveyance, in the records of each county into which the ditch, canal or reservoir, to which such certificate relates, shall extend; and said certificate, or said record thereof, or a duly certified copy of such record, shall be prima facie evidence of so much of said decree as shall be recited therein, in any suit or proceeding in which the same may be relevant.

Legislation. Sec. 3285. G. S. § 1767. Act 1881 § 5, cited under § 3277.

CITATIONS.

It is the duty of the commissioner to distribute the water in accordance with the decree.—*Gunnison County v. Hider*, 47 C. 445, 107 P. 1069.

3286. Clerk publish notice—Copies posted.

SEC. 122. Notice shall be given by the clerk of said court, of the time so appointed, by publishing the same in one public newspaper in such county into which such water district may extend; which notice shall be so published in such paper once in each week until four successive weekly publications shall have been made, the last of which shall be on a day previous to the day appointed as aforesaid. Said notice shall contain a copy of said order, and shall notify all persons, associations and corporations interested as owners in any ditch, canal or reservoir in such water district, to appear at said court at the time so appointed and file a statement of claim under oath, in case no statement has been before filed by him, her or them, showing the ditch, canal or reservoir, or two or more such, in which he, she or they claim an interest, together with the names of all the owners thereof, which statement may be made by any one of the owners of such ditch, canal or reservoir for and in behalf of all; and also that all persons interested as owners or consumers may then and there present his, her or their proofs for or against any priority of right of water by appropriation sought to be shown by any party by or

through any such ditch, canal or reservoir, (either as owner or consumer of water drawn therefrom). Ten printed copies of said notice shall also be posted in ten public places in such water district, not less than twenty days before the day so appointed, which copies shall be so posted by the party or parties moving the adjudication.

Legislation. Sec. 3286. G. S. § 1768. Act 1881 § 6, cited under § 3277.

CITATIONS.

This section cited in an action to modify a general decree.—*Greer v. Heiser*, 16 C. 309, 26 P. 771.

Proper county in which to publish notice where water district extends into two or more counties.—*Wadsworth D. Co. v. Brown*, 39 C. 66, 88 P. 1062.

This section referred to in considering the insufficiency of the publication of an order allowing an appeal from a judgment under sec. 3280.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3287. Proof of publication and posting copies—Entry by clerk.

SEC. 123. Proof of the proper publication of said notice or notices in said public papers shall consist in such case of the sworn certificate of the publisher of such newspaper, showing the publication to have been made in accordance with the provisions of section three of this act, which certificates shall be procured by the party or parties moving the adjudication, at his or their expense, and on said certificate being filed the clerk shall enter the amount of the printer's fee therefor as costs advanced by the party procuring the same, which sum shall be counted to his, her or their credit in distribution of costs. Proof of the posting of said printed copies shall be made by the affidavit of some credible person, certified to be such by the clerk or other officer administering the oath, showing when, where and how said copies were posted.

[Section 3 referred to above is section 3282.]

Legislation. Sec. 3287. G. S. § 1769. Act 1881 § 7, cited under § 3277.

CITATIONS.

This section cited in determining the proper county in which

CITATIONS CONTINUED.

to publish notice.—*Wadsworth D. Co. v. Brown*, 39 C. 67, 88 P. 1063.

This section referred to in considering the insufficiency of the publication of an order allowing an appeal from a judgment under sec. 3280.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3288. Notices served on all parties—How served—Notice by mail.

SEC. 124. The party or parties moving such adjudication shall cause a printed or written copy of the notice aforesaid, published as aforesaid, to be served on every person, association or corporation shown by the statement of claim on file, as provided in section one hereof, which service shall be made within ten days from the time of the first publication by the clerk, by any credible person certified by said clerk or referee to be such, by delivering such copy as aforesaid to the person to be served, if such person, by due diligence, can be found in the county of his residence. If such person cannot be found, as aforesaid, then, by leaving such copy at his or her usual place of residence, if he or she have such residence, in charge of some person of the age of fourteen years or over, there residing; and on any corporation, by delivering the copy to the president, or vice-president, or secretary, or treasurer thereof, or the manager, or superintendent in charge of their ditch, canal or reservoir, or authorized agent or attorney, or by leaving such copy at the office or usual place of business of such corporation, and the proof of such service shall be made by affidavit of the person or persons serving said copies, showing when and how such service has been made on such party. In case of parties not served in any manner as aforesaid, the clerk shall deposit in the postoffice, duly enclosed in an envelope with the proper postage stamp thereon, a copy directed to the address of such party, shown in the statement of claim aforesaid, filed by him or her under section one hereof.

[Section 1 referred to above is section 3277.]

Legislation. Sec. 3288. G. S. § 1770. Act 1881 § 8, cited under § 3277.

3289. After decree entered no further publication required in subsequent proceedings, unless.

SEC. 125. That in all water right adjudication proceedings brought under the statutes of this state for determining and decreeing priority rights to the adjudicated water right, after a general decree has been entered in such water district, in pursuance of the statutory notice by publication and posting, as now required by law, no further publication or posting of such notice or any notice of such individual subsequent proceedings shall be required unless by order of court upon good cause shown therefor; and in all such proceedings subsequent to the entry of such general decree, written notice shall be given for such length of time and be served upon the parties interested adversely in such manner as is now or may hereafter be provided by law for the service of summons in other civil cases; or in such reasonable time and manner as may be fixed by rule of court; *Provided*, Such notice shall contain the date and amount of the priority right claimed in each case, the source of supply from which same shall be taken, and in case of a transfer of a water right the notice shall contain a brief description of the water right sought to be transferred, the place and ditch, if any, from which and to which the change is desired, and which notice shall give the date that the hearing will be had, and be served not less than fifteen days prior to the date of such hearing; and which notice shall be dated and may be signed and issued either by the attorney for the petitioner or by the clerk of the district court. This act shall not be construed as a repeal of any of the statutes now existing relative to notice in any water right proceedings; and in any proceeding for any of the purposes herein set forth the petitioner may, at his election, proceed under this act, or under the statutes in force at the time of the passage of this act.

[For service of summons see Code, section 40, p. 81.]

Legislation. Sec. 3289. Act 1905 p. 244 § 1, entitled:

AN ACT

In Relation to Notice in Water Right Proceedings.

3290. Court number all ditches—Reservoirs—Number appropriations.

SEC. 126. The court, in making such decree, as aforesaid, shall number the several ditches and canals in the water district, concerning which adjudication is made, in consecutive order, according to priority of appropriation of water thereby made by the original construction thereof, as near as may be, having reference to the date of each decree as rendered, and shall also number the reservoirs in like manner, separately from ditches and canals, and shall further number each several appropriations of water consecutively, beginning with the oldest appropriation, without respect to the ditches or reservoirs by means of which such appropriations were made; whether such appropriation shall have been made by means of construction, extension or enlargement, which number of each ditch, canal or reservoir, together with the number or numbers of any appropriations of water held to have been made by means of the construction, extension or enlargement thereof, shall be incorporated in said decree and certificate of the clerk, to be issued to the claimants, as provided in section one of this act, so as to show the order in priority of such ditch or canal, and of such reservoir, and also of such successive appropriation of water pertaining thereto, for the information of the water commissioner of the district in distributing water; such numbering to be as near as may be having reference to date of decrees as rendered.

[Section 1 referred to is section 3277.]

Legislation. Sec. 3290. Act 1881 p. 149 § 9, cited under § 3277. G. S. § 1771.

CITATIONS.

The same ditch may have two or more priorities belonging to the same or different parties.—*Nichols v. McIntosh*, 19 C. 24, 34 P. 279. *Park v. Park*, 45 C. 354, 101 P. 406.

The acts of 1879 and 1881 do not provide for the settling of priorities beyond the limits of the district.—*Sterling I. Co. v. Downer*, 19 C. 599, 36 P. 788.

A decree for a ditch gives no priority of right for the storage of water in a reservoir.—*New Loveland etc. Co. v. Cons. Home etc. Co.*, 27 C. 531, 62 P. 368.

Failure to number the ditches was a mere irregularity in the decree.—*Lake Fork Ditch Co. v. Haley*, 28 C. 517, 67 P. 158.

CITATIONS CONTINUED.

Where decrees are not in the record the presumption is that they have conformed to the requirements of this and sec. 3284.—*Roberson v. Peo.*, 40 C. 123, 90 P. 80.

A decree for a reservoir entitles the owner to fill the sarge only once a year.—*Windsor Reservoir Co. v. Lake Supply D. Co.*, 44 C. 223, 98 P. 733.

This and secs. 3277 and 3284 contemplate that rights to water for reservoirs may be adjudicated.—*Gunnison County v. Hider.* 47 C. 445, 107 P. 1069.

B. PROCEEDINGS BEFORE REFEREE.

Section.

- 3291. When court may appoint referee—What referred.
- 3292. Referee's notice—Contents—Publication—Posting copies.
- 3293. Proof of posting notices.
- 3294. Who may offer evidence.
- 3295. When former evidence may be used.
- 3296. Powers and duties of referee—Books and records, evidence.
- 3297. Refusal to produce books or papers—Effect.
- 3298. What facts to be ascertained by proofs.
- 3299. Contempt before referee.
- 3300. Compensation of referee—How paid—Accounts.
- 3301. Fees of witnesses—By whom paid.
- 3302. Duties of referee—Rights of parties—Adjournment—Notice.
- 3303. Rights of parties against referee for neglect, oppression, etc.
- 3304. Report of referee—Contents.
- 3305. Filing report—Court proceed to determine—Exceptions—Approval—Entry.
- 3306. Court may dismiss referee—Vacancy—New appointemnt.

3291. When court may appoint referee—What referred.

SEC. 127. If for any cause the judge of said court shall deem it impracticable or inexpedient to proceed to hear such evidence in open court, he shall, instead of the order mentioned in section four of this act, make and cause to be entered of record an order appointing some discreet person, properly qualified, a referee of said court, to whom shall be referred the statement of claim aforesaid on file in said matter, the matter of taking evidence and reporting the same, making an abstract and findings upon the

same, and preparing a decree in said adjudication; and also in case of any water district in which a referee has been heretofore appointed, and evidence taken by him under the provisions of the act, the title of which is recited in section four of this act; such evidence so already taken, together with the abstract thereof, and report of the referee who took the same, shall be also referred to said referee, to be appointed as aforesaid, and he shall proceed with his duties as hereinafter provided, first taking an oath of office, such as is required to be taken by referees in other cases under the provisions of the code of civil procedure.

[Section 4 above referred to is section 3284.]

[For oath of referee see Code section 224, p. 117.]

Legislation. Sec. 3291. Act 1881 p. 149 § 10, cited under § 3277. G. S. § 1772.

CITATIONS.

This section cited in an action to amend a general decree.—
Greer v. Helser, 16 C. 309, 26 P. 772.

3292. Referee's notice — Contents — Publication — Posting copies.

SEC. 128. Said referee shall prepare and publish a notice containing a copy of the order appointing him, in which notice he shall appoint a time or times, and place or places, suitable and convenient for the claimants in such water district, at which he will attend for the purpose of hearing and taking evidence touching the priority of right of the several ditches, canals and reservoirs in said district and notifying all persons, associations, and corporations interested as owners or consumers of water to attend by themselves, their agents or attorneys, at the times and places appointed in said notice, and notifying such owners to then and there file a statement of claim in case such statement has not been already filed under the provisions of section one hereof, such as mentioned in section six hereof, and present their proofs touching any priority of right claimed by them for any ditch, canal or reservoir in said district, which notice shall be published in the same manner and times, and in all respects according to the provisions for publication of the newspaper notices mentioned in section six of this act, and proof of such publication shall be made in same

manner as is provided in section seven of this act; and he shall also post ten or more printed copies of such notice in ten or more public places in said district, which copies shall be so posted at least twenty days before the time of commencing to take said evidence.

[Section 6 above referred to is section 3286.]

[Section 1 referred to is section 3277.]

[Section 7 referred to is section 3287.]

Legislation. Sec. 3292. G. S. § 1773. Act 1881 § 11, cited under § 3277.

CITATIONS.

This section cited in an action to amend a general decree.—*Greer v. Heiser*, 16 C. 309, 26 P. 772.

Publication of an order of appeal under sec. 3308 in a newspaper in one county, while the court of another county has exclusive jurisdiction, was insufficient. Where time for publication had elapsed appeal was dismissed.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3293. Proof of posting notices.

SEC. 129. Proof of the posting of said copies shall be made by the affidavit of said referee or other person certified by him to be a credible witness, which shall show when, where and how the said copies were posted, and shall be filed by him with his report.

Legislation. Sec. 3293. G. S. § 1774. Act 1881 § 12, cited under § 3277.

CITATIONS.

This section cited in an action to amend a general decree.—*Greer v. Heiser*, 16 C. 309, 26 P. 772.

3294. Who may offer evidence.

SEC. 130. Said referee shall attend at the times and places mentioned in his notice for the purpose therein mentioned; and all persons, associations, choosing to do so, and being interested as owners of or consumers of water from any ditch, canal or reservoir in said district, and may also attend by themselves, their agents or attorneys, before said referee, at some one or more of said times and places so appointed, and shall have right to offer any and all evidence they may think advisable for their interests in the matter to be adjudicated, as well in districts in which evi-

dence has been heretofore taken as in other districts. All such evidence as has been heretofore taken, if any, in such district, shall be kept present by said referee, subject to inspection by any party desiring to examine the same for purposes of the investigation.

[Claim must be filed before party can offer evidence. Section 3316.]

Legislation. Sec. 3294. G. S. § 1775. Act 1881 § 13, cited under § 3277.

3295. When former evidence may be used.

SEC. 131. Whenever testimony shall or may be taken, in any district created by this act, for the purpose of procuring decree as to appropriation of water, and priorities thereof, under the statutes of this state, any testimony theretofore taken, before any former referee, may be introduced and shall be received as evidence.

Legislation. Sec. 3295. Act 1885 p. 259 § 28. An Act with an interminable title but chiefly confined to defining the boundaries of the water districts.

3296. Powers and duties of referee—Books and records, evidence.

SEC. 132. Said referee shall have power to administer oaths to all witnesses, and to issue subpoenas for witnesses and subpoenas duces tecum, which subpoenas may be served by any party, or constable, or sheriff, or deputy sheriff, and may require witnesses to appear at any of the places appointed by said referee for taking evidence. He shall permit all witnesses to be examined by the parties calling them respectively and to be cross-examined by any party interested, and he shall take all testimony in writing and note all objections offered to any part of the testimony taken, with the cause assigned for the objection, and shall proceed in all other respects as in case of taking depositions. He shall certify all books and papers offered by any one in his own behalf, and preserve them with the testimony offered concerning the same, and in case of books and papers offered in evidence, which shall not be under the control of the party desiring the evidence for which such books may be offered, said referee shall make a true copy of the parts demanded and certify the same, and preserve

the same, together with the evidence offered concerning the same and concerning said books and papers, as part of the evidence in the matter.

Legislation. Sec. 3296. Act 1881 p. 151 § 14 cited under § 3277. G. S. § 1776.

CITATIONS.

Evidence taken before a referee and relating to a particular ditch is admissible in an action to determine the respective rights of the owners of that ditch. Presumption that the files of proceedings before a referee contain the entire record.—*Woods v. Sargent*, 43 C. 268, 95 P. 932.

3297. Refusal to produce books or papers—Effect.

SEC. 133. No person, association or corporation wilfully refusing to produce any book or paper, if in his or their power to do so, when rightfully demanded for examination and copying, shall be allowed the benefit of any testimony or proofs in his, her or their behalf, in making final adjudication, if the court shall be satisfied, from all the evidence shown concerning such refusal, that the same was wilful.

Legislation. Sec. 3297. G. S. § 1777. Act 1881 § 15, cited under § 3277.

3298. What facts to be ascertained by proofs.

SEC. 134. Said referee shall also examine all witnesses to his own satisfaction, touching any point involved in the matter in question, and shall ascertain as far as possible the date of the commencement of each ditch, canal or reservoir, with the original size and carrying capacity thereof, the time of the commencement of each enlargement thereof, with the increased carrying capacity thereby occasioned, the length of time spent in such construction or enlargement, the diligence with which the work was prosecuted, the nature of the work as to difficulty of construction, and all such other facts as may tend to show compliance with the law in acquiring the priority of right claimed for such ditch, canal or reservoir; and upon all the facts so obtained shall be determined the relative priorities among the several ditches, canals and reservoirs, the volume or amount of water lawfully appropriated by

each, as well as by means of the construction, as by the enlargements thereof, and the time when each such several appropriations took effect.

· **Legislation.** Sec. 3298. G. S. § 1778. Act 1881 § 16, cited under § 3277.

3299. Contempt before referee.

SEC. 135. Every person present before said referee at any time when he shall be engaged in hearing testimony, who shall wilfully disturb the proceedings; and every person who shall wilfully refuse or neglect to obey any subpoena issued by said referee, when his lawful fees shall be tendered him for his attendance before the referee, shall be guilty of contempt of the court appointing such referee, and on complaint, under oath of the referee or other person, before the said district court, or judge thereof in vacation, may be brought before the court or judge and dealt with accordingly.

Legislation. Sec. 3299. G. S. § 1779. Act 1881 § 17, cited under § 3277.

3300. Compensation of referee—How paid—Accounts.

SEC. 136. The referee appointed in this act shall be paid the sum of six dollars per day while engaged in discharging his duties as herein provided, and also his reasonable and necessary expenses and mileage at the rate of ten cents for each mile actually and necessarily traveled by him in going and coming in the discharge of his duties as such referee, which said per diem allowance, expenses and mileage shall be paid out of the treasury of the county in which such water district shall lie, if it be contained in one county, and if such water district shall extend into two or more counties, then in equal parts thereof, shall be paid out of the treasury of such county into which such district shall extend. He shall keep a just and true account of his services, expenses and mileage and present the same from time to time to the district court, or judge in vacation verifying the same by oath, and the judge, if he find the same correct and just, shall certify his approval thereof thereon, and the same shall thereupon be allowed by the board of county commissioners of the county in which said water district shall lie, but if said water district ex-

tend into two or more counties, he shall receive from the clerk of the district court separate certificates, under seal of the court, showing the amount due him from each county, upon which certificate the board of county commissioners of the respective counties shall allow the same on presentation thereof.

Legislation. Sec. 3300. G. S. § 1798. Act 1881 § 36, cited under § 3277.

3301. Fees of witnesses—By whom paid.

SEC. 137. Every witness who shall attend before said referee under subpoena by request of any party, shall be entitled to the same fees and mileage as witnesses before the district court in the county in which he shall so attend, and shall be paid by the party requiring his testimony.

[For fees and mileage of witnesses, see sections 2542 and 2543.]

Legislation. Sec. 3301. G. S. § 1780. Act 1881 § 18, cited under § 3277.

3302. Duties of referee—Rights of parties—Adjournment—Notice.

SEC. 138. The said referee shall take all the testimony offered, and for that purpose shall give reasonable opportunity to all parties to be heard, and may at any place, when the time limited thereat shall expire, adjourn the further taking of testimony then proposed or desired to be offered to the next place in order, according to his said published appointments, and at the last place may continue until all testimony shall be taken, or make further appointments at any former place or places as may seem best and most convenient for all parties, giving reasonable notice thereof.

Legislation. Sec. 3302. G. S. § 1781. Act 1881 §19, cited under § 3277.

3303. Rights of parties against referee for neglect, oppression, etc.

SEC. 139. Every party interested shall have the right to complain to the court of any act of wilful neglect or oppression on the part of the said referee in exercising his powers under this act, whereby such party shall have been aggrieved, either by

refusal of said referee to hear or take evidence offered, or by preventing reasonable opportunity to offer such evidence; and the court may order such proceedings in the premises as will give redress of the grievance, at the cost of said referee, if he appear wilfully in fault; otherwise, in case of accident or mistake, costs shall be awarded as to the court shall seem just.

Legislation. Sec. 3303. G. S. § 1785. Act 1881 § 23, cited under § 3277.

3304. Report of referee—Contents.

SEC. 140. Said referee, upon closing the testimony, shall proceed to carefully examine the same, together with all testimony and proofs which may have been heretofore taken by any former referee in the same district, if any such shall have been taken, under the provisions of said act, the title of which is recited in section four of this act; he shall make an abstract of all the testimony and proofs in his possession, concerning each ditch, canal and reservoir separately, and shall number each ditch and canal in order, and likewise each reservoir, each class consecutively, and also number the several appropriations of water shown by the evidence, all in manner and form as provided in section nine hereof, and shall make a separate finding of all the facts connected with each ditch, canal and reservoir, touching which evidence shall have been offered; and he shall prepare a draft of a decree in accordance with his said findings, in substance the same as the decree mentioned in section four of this act, and conformable also to the provisions of section nine hereof, so far as the same are applicable; which decree, so prepared by him, shall be returned with his report to the court, and he shall file his report with said evidence, abstract and findings, and said decree, with the clerk of the court, and inform the judge of so doing, without delay.

[Sections 4 and 9 referred to above are sections 3284 and 3290.]

Legislation. Sec. 3304. G. S. § 1782. Act 1881 § 20, cited under § 3277.

3305. Filing report—Court proceed to determine—Exceptions—Approval—Entry.

SEC. 141. Upon the filing of said report the court, or

judge thereof in vacation, shall cause an order to be entered setting some day in a regular or special term of said court as soon as practicable, when the court will proceed to hear and determine the report; at which time any party interested may appear by himself or counsel and move exceptions to any matter in the findings or decree made by said referee, and after hearing the same the court shall, if the decree reported be approved, cause the same to be entered of record, or otherwise such modifications thereof or other decree as shall be found just and conformable to the evidence and the true intent of this act, and to so much of any and all former laws of the state as shall be adjudged consistent herewith.

● **Legislation.** Sec. 3305. G. S. § 1783. 'Act 1881 § 21, cited under § 3277.

CITATIONS.

A decree may be modified for error of the referee in his judgment upon the weight of the testimony.—*Dorr v. Hammond*, 7 C. 80, 1 P. 693.

Objections and exceptions to the report of the referee are part of the record proper.—*Daum v. Conley*, 27 C. 63, 59 P. 755.

This section cited in an action for a review of a decree.—*Rio Grande L. Co. v. Prairie D. Co.*, 27 C. 227, 60 P. 727.

The judgment book as evidence is preferred to a paper purporting to be the decree.—*Bates v. Hall*, 44 C. 366, 98 P. 5.

3306. Court may dismiss referee—Vacancy—New appointment.

SEC. 142. The district court, or judge thereof in vacation, in case of the death, resignation, illness, absence or other disability of the referee hereby provided for, or for any misconduct in him, or other good cause to such judge appearing, shall appoint such other properly qualified person in his stead as he shall deem proper, who shall proceed without delay to perform all the duties of his office, as herein pointed out, which shall remain unperformed by his predecessor in office.

Legislation. Sec. 3306. G. S. § 1795. Act 1881 § 33, cited under § 3277.

C. APPEALS.

Section.

3307. Who may appeal—Statement—Approval—Order—Bond.
3308. Copy of appeal served on appellees—Publication and posting copies—Proof.
3309. Proof of service of notice—Supreme court make rules.
3310. Transcript to be filed in six months—Bill of exceptions.
3311. Costs in supreme court.
3312. Supreme court amend or make new decree or remand.
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3307. Who may appeal — Statement — Approval — Order — Bond.

SEC. 143. Any party or parties representing any ditch, canal or reservoir, or any number of parties representing two or more ditches, canals or reservoirs, which are affected in common with each other by any portion of such decree, by which he or she or they may feel aggrieved, may have an appeal from said district court to the supreme court, and in such case the party or parties joining, desiring an appeal, shall be the appellants, and the parties representing any one or more ditches, canals or reservoirs affecting in common adversely to the interests of appellants shall be the appellees. The party or parties joining in such appeal shall file a statement in writing, verified by affidavit properly entitled in such cause in the district court, which statement shall show that the appellants claim a valuable interest in the ditch, canal or reservoir, or two or more of such, which are affected in common with each other by some portion of said decree, also stating the name or names, or otherwise the description of the same, and the name or names, or otherwise the description of any one or more other ditches, canals or reservoirs, which by said decree derive undue advantage in respect of priority as against that or those represented by appellants; and also setting forth the name or names of the party or parties claiming such other one or more ditches, canals or reservoirs, affected in common by said decree adversely to the interest of appellant or appellants, and praying that an appeal be allowed against such other parties as appellees. If the court or judge in vacation, on examination, find such statement in accordance with the statements of claim filed by the

parties named as appellees, mentioned in section one of this act, he shall approve the same and make an order to be prepared and presented by the appellants allowing the appeal and showing the name or names of the appellants and appellees, with the name or names or description of the one or more ditches, canals or reservoirs, claimed by the party or parties appellant or appellee, as shown by their several statements of claim filed as aforesaid, before the taking of testimony, and fix the amount of the appeal bond, which bond shall be executed by one or more of appellants, as principal or principals, and by sufficient securities, and approved by the court or judge in vacation, and shall be conditioned for the payment of all costs which may be awarded against the appellants or any of them in the supreme court.

[Section 1 above referred to is section 3277.]

Legislation. Sec. 3307. G. S. § 1789. Act 1881 § 27, cited under § 3277.

CITATIONS.

This section does not give appeal from a decision of the county commissioners under sec| 3264.—*Golden Canal Co. v. Bright*, 8 C. 154, 6 P. 147.

This section cited in construing sec. 3313.—*Montrose Canal Co. v. Loutsenhizer D. Co.*, 23 C. 236, 48 P. 533.

By this section obtaining an order allowing an appeal is an ex-parte proceeding. Practice in district court. By whom statement to be verified.—*Daum v. Conley*, 27 C. 60, 61, 59 P. 754.

Appeals are regulated by this section and not by the code.—*Upper Platte etc. Co. v. Fort Morgan etc. Co.*, 27 C. 214, 60 P. 484.

Sections 3307-3312 cited in an action to review a decree under sec. 3318.—*Rio Grande L. Co. v. Prairie D. Co.*, 27 C. 234, 60 P. 729.

Water consumers are not entitled to an appeal because of the failure of the owner of the ditch to perfect its appeal.—*Randall v. Rocky Ford D. Co.*, 29 C. 432, 68 P. 240.

The provisions of the statute requiring transcript of record to be filed etc. are mandatory.—*Needle Rock D. Co. v. Crawford-Clipper D. Co.*, 32 C. 209, 75 P. 424.

Practice upon motion to dismiss appeal when substantial rights would be determined by dismissal.—*Farmers' Union D. Co. v. Rio Grande C. Co.*, 32 C. 318, 76 P. 366.

This section cited in holding that one who files a claim but offers no evidence is concluded by the decree and the two years

CITATIONS CONTINUED.

period of limitation.—*Crippen v. X. Y. I. D. Co.*, 32 C. 449, 76 P. 795.

A decree when first entered is not final because of the provisions of this and sec. 3318 for review and appeals.—*Fort Lyon C. Co. v. Ark. Val. etc. Co.*, 39 C. 337, 90 P. 1025.

Questions of public interest may be considered on appeal although the parties by reason of failure to comply with the statute may be precluded.—*Windsor R. & C. Co. v. Lake Supply D. Co.*, 44 C. 215, 98 P. 731.

Sections 3307-3312 cited in finding that the record did not comply with the statute or the rules of court.—*Finley v. Cache La Poudre I. Co.*, 44 C. 234, 98 P. 173.

3308. Copy of order served on appellees—Publication and posting copies—Proof.

SEC. 144. The order last aforesaid shall be entered of record, and the appellant or appellants shall cause a certified copy thereof to be served on each of the appellees, by delivering the same to him or her, if he or she may be found, or otherwise serving the same in manner the same as may be at the time approved for serving summons from the district court by the laws then in force, and shall also cause the said order to be published in the same manner as the notices required to be published by the referee mentioned in section eleven of this act, and proof of the publication in any newspaper shall be the same as in case of said referee's notice, and proof of the posting of the ten printed copies in the district shall be by affidavit of the party posting the same, with the certificate of the clerk of the district court appealed from, that the affiant is a known and credible person.

[Section 11 above referred to is section 3292.]

[For service of summons see Code, section 40, p. 81.]

Legislation. Sec. 3308. G. S. § 1790. Act 1881 § 28, cited under § 3277.

CITATIONS.

The provision of this section as to publication is mandatory.—*Needle Rock, D. Co. v. Crawford-Clipper D. Co.*, 32 C. 209, 75 P. 424.

Publication of the order in one county while the court of another county had exclusive jurisdiction was insufficient.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3309. Proof of service of notice—Supreme court make rules.

SEC. 145. The said proof of the service and publication of said order allowing the appeal shall be filed with the clerk of the supreme court within sixty days after the making of said order, and if not so filed, the supreme court shall, on motion of the appellee or any of the appellees, at any time after such default in filing said proof, and before the said proof shall be filed, dismiss such appeal, and if the transcript of record be not filed within the time limited by section twenty-nine of this act, such appeal shall, on motion, be dismissed. After the filing of the record and proof of service aforesaid, the cause on appeal shall be proceeded with as the rules of the supreme court, or such special rules as said court may make in such cases, and their order from time to time thereunder may require. Said court shall have power to make any and all such rules concerning such appeals as may be necessary and expedient in furtherance of this act, as well as to preparation of the case for submission as to supplying deficiencies of record, if any, and for avoiding unnecessary costs and delay.

[Section 29 above referred to is section 3310.]

Legislation. Sec. 3309. G. S. § 1794. Act 1881 § 32, cited under § 3277.

CITATIONS.

The supreme court may make rules concerning appeals.—*Golden Co. v. Bright*, 8 C. 154, 6 P. 147.

Consumers are not entitled to an appeal on the ground that the ditch owner's appeal was dismissed for failure to comply with this section.—*Randall v. Rocky Ford D. Co.*, 29 C. 431, 68 P. 240.

The provisions of this section as to proof of service are mandatory.—*Needle Rock D. Co. v. Crawford-Clipper D. Co.*, 32 C. 210, 75 P. 424. *Baer Bros. L. Co. v. Wilson*, 32 C. 501, 77 P. 246.

Where the time fixed for publishing the notice in the proper county has elapsed the appeal must be dismissed.—*Napier v. Glenwood L. & W. Co.* (Dec. 1910), 112 P. 323.

3310. Transcript to be filed in six months—Bill of exceptions.

SEC. 146. The appellant or appellants shall file the transcript of record of the district court with the clerk of the supreme court at any time within six months after the appeal shall be

allowed as aforesaid. Only so much of the decree appealed from, and so much of the evidence as shall affect the appropriations of water claimed by means of the construction or enlargement or re-enlargement of the several ditches, canals and reservoirs mentioned in the order allowing the appeal, need be copied into the bill of exceptions.

Legislation. Sec. 3310. G. S. § 1791. Act 1881 § 29, cited under § 3277.

CITATIONS.

Bill of exceptions may be withdrawn for amendment;—what the bill should contain as to evidence.—*Callin L. & C. Co. v. Burke*, 22 C. 421, 45 P. 387.

The bill of exceptions must contain all the evidence in any manner affecting the ditches named in the appeal order.—*Kerr v. Dudley*, 26 C. 459, 58 P. 611. *Daum v. Conley*, 27 C. 60, 59 P. 754. *Rio Grande L. Co. v. Prairie D. Co.*, 27 C. 234, 60 P. 729.

Time within which to file transcript begins with the day the appeal is granted. Failure to file bill of exceptions not ground for dismissal as appellant may have matters presented by record proper determined.—*Daum v. Conley*, 27 C. 60, 62, 59 P. 754.

If the transcript is not filed in time the appeal must be dismissed upon motion.—*Needle Rock D. Co. v. Crawford-Clipper D. Co.*, 32 C. 210, 75 P. 424.

3311. Costs in supreme court.

SEC. 147. The supreme court, on dismissal of such appeal, or on affirming or reversing the parts of the decree appealed from, in whole or in part, shall award costs, as in its discretion shall be found and held to be equitable.

Legislation. Sec. 3311. G. S. § 1792. Act 1881 § 30, cited under § 3277.

3312. Supreme court amend or make new decree, or remand.

SEC. 148. The supreme court, in all cases in which judgment is rendered, and any part of the decree appealed from is reversed, and in which it may be practicable, shall make such decree in the matters involved in the appeal as should have been made by the district court, or direct in what manner the decree of that court shall be amended.

Legislation. Sec. 3312. G. S. § 1793. Act 1881 § 31, cited under § 3277.

D. GENERAL PROVISIONS.

Section.

3313. Suit must be brought in four years—Injunction—Commissioner's duty.
3314. After four years suit barred.
3315. Court may make rules—Act liberally construed.
3316. Party must file claim before offering evidence.
3317. Effect of failure to offer evidence.
3318. Re-argument—Review—Limitation two years.
3319. Sheriff not to serve writ outside his county.
3320. Fees of district clerk—How audited—Paid.
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3313. Suits must be brought in four years—Injunctions—Commissioner's duty.

SEC. 149. Nothing in this act or in any decree rendered under the provisions thereof, shall prevent any person, association or corporation from bringing and maintaining any suit or action whatsoever hitherto allowed in any court having jurisdiction, to determine any claim of priority of right to water, by appropriation thereof, for irrigation or other purposes, at any time within four years after the rendering of a final decree under this act in the water district in which such rights may be claimed, save that no writ of injunction shall issue in any case restraining the use of water for irrigation in any water district wherein such final decree shall have been rendered, which shall affect the distribution or use of water in any manner adversely to the rights determined and established by and under such decree, but injunctions may issue to restrain the use of any water in such district not affected by such decree, and restrain violations of any right thereby established, and the water commissioner of every district where such decree shall have been rendered shall continue to distribute water according to the rights of priority determined by such decree, notwithstanding any suits concerning water rights in such district, until in any suit between parties the priorities between them may be otherwise determined, and such water commissioner have official notice by order of the court or judge determining such priorities, which notice shall be in such form and so given as the said judge shall order.

Legislation. Sec. 3313. G. S. § 1796. Act 1881 § 34, cited under § 3277.

CITATIONS.

An action by one ditch against two other ditches to modify as between them, a general decree, is maintainable under this section.—*Greer v. Heiser*, 16 C. 309, 310, 26 P. 771.

An action to set aside a decree obtained without notice, which modified a former decree, is not within the limitations of this and sec. 3314.—*Peck Lateral D. Co. v. Pella I. D. Co.*, 19 C. 224, 34 P. 989.

After adjudication in one county it was error for a district court of another county to entertain jurisdiction of a bill in equity to settle priorities. This section does not repeal the provision of sec. 3276 giving exclusive jurisdiction to a particular court.—*Louden I. C. Co. v. Handy D. Co.*, 22 C. 106-113, 43 P. 538.

The right to bring an independent action may be exercised only by those who were not parties to the adjudication.—*Montrose C. Co. v. Loutsenhizer D. Co.*, 23 C. 235, 48 P. 533. *Handy D. Co. v. South Side D. Co.*, 26 C. 337, 58 P. 32.

Cited in holding that an appeal from an adjudication may not be taken after two years.—*Upper Platte Co. v. Fort Morgan Co.*, 27 C. 215, 60 P. 484.

One not a party to an adjudication may establish his priorities by a proceeding within four years from date of the decree.—*Crippen v. X. Y. Irr. Co.*, 32 C. 455, 458, 76 P. 796. *Broad Run I. Co. v. Deuel etc. Co.*, 47 C. 579, 108 P. 757.

This and sec. 3314 apply to appropriators in different districts taking water from the same stream:—they are not unconstitutional.—*Fort Lyon C. Co. v. Ark. Valley etc. Co.*, 39 C. 335, 340, 90 P. 1024.

Where one was not a party to an adjudication, this section does not authorize the special proceedings under sec. 3317.—*Broad Run Co. v. Deuel Co.*, 47 C. 576, 108 P. 757.

When the two and four year years limitations apply. (*Greer v. Heiser*, 16 C. 306 and *Nichols v. McIntosh*, 19 C. 22 modified).—*Id.* 579-583.

3314. After four years suit barred.

SEC. 150. After the lapse of four years from the time of rendering a final decree, in any water district, all parties whose interests are thereby affected shall be deemed and held to have acquiesced in the same, except in case of suits before then brought, and thereafter all persons shall be forever barred from setting up

any claim to priority of rights to water for irrigation in such water district adverse or contrary to the effect of such decree.

Legislation. Sec. 3314. G. S. § 1797. Act 1881 § 35, cited under § 3277.

CITATIONS.

This and sec. 3318 do not apply to parties who have had their day in court. (But see 47 C. 583 hereunder).—*Nichols v. McIntosh*, 19 C. 27, 34 P. 280.

An action to set aside a decree obtained without notice, which modified a former decree, is not within the limitations of this and sec. 3313.—*Peck Lateral D. Co. v. Pella I. D. Co.*, 19 C. 224, 34 P. 989.

A decree can not in the absence of fraud be reopened by a party thereto after the lapse of four years.—*Boulder & Weld Co. v. Lower Boulder Co.*, 22 C. 118, 43 P. 541. *Crippen v. X. Y. I. D. Co.*, 32 C. 449, 455, 76 P. 795.

Where a conditional decree was awarded and a subsequent application made to have further proof heard, the two and four years limitations did not apply.—*Waterman v. Hughes*, 33 C. 274, 80 P. 892.

This and sec. 3313 applies to appropriators in different districts taking water from the same stream;—they are not unconstitutional.—*Fort Lyon C. Co. v. Ark Val. etc. Co.*, 39 C. 335, 340, 90 P. 1024.

Every inhabitant of the district, whether he appeared or not is bound by the decree;—when the two or four year limitations apply (*Greer v. Helser*, 16 C. 306 and *Nichols v. McIntosh*, 19 C. 22, modified).—*Broad Run Co. v. Deuel Co.*, 47 C. 578-583, 108 P. 757.

3315. Court may make rules—Act liberally construed.

SEC. 151. The district court, or judge thereof in vacation, shall have power to make all orders and rules consistent with this act which may be found necessary and expedient, from time to time during the progress of the case, for carrying out the intent of this act, and of all parts consistent therewith of the said act, the title of which is recited in section four thereof; as well touching the proceedings in court as of the acts and doings of said referee, for the purpose of securing to any party aggrieved by the acts of said referee or any proceeding of the court, opportunity for redress; and this act shall be construed liberally in all courts,

in favor of securing to all persons interested the just determination and protection of their rights.

[Section 4 above referred to is section 3284.]

Legislation. Sec. 3315. G. S. § 1786. Act 1881 § 24, cited under § 3277.

CITATIONS.

Mandamus will not lie to compel a judge to modify rules made by him.—*Union Colony v. Elliott*, 5 C. 379.

This section cited in holding that the first court acquiring jurisdiction retains it.—*Louden Canal Co. v. Handy Ditch Co.*, 22 C. 107, 43 P. 537.

A decree upheld under the liberal rule of construction enjoined by this section.—*Broadmoor D. Co. v. Brookside W. & I. Co.*, 24 C. 547, 52 P. 794.

Questions in which the public had an interest considered under the liberal construction enjoined by this section.—*Windsor Res. Co. v. Lake S. D. Co.*, 44 C. 216, 98 P. 731.

3316. Party must file claim before offering evidence.

SEC. 152. No persons, association or corporation representing any ditch, canal or reservoir, shall be permitted to give or offer any evidence before said referee until he, she or they shall have filed a statement of claim in substance the same in all respects as is required to be filed under the provisions of section one hereof.

[Section 1 referred to is section 3277.]

Legislation. Sec. 3316. G. S. § 1787. Act 1881 § 25, cited under § 3277.

3317. Effect of failure to offer evidence.

SEC. 153. No claim of priority of any person, association or corporation, on account of any ditch, canal or reservoir, as to which he, or she, or they shall have failed or refused to offer evidence under any adjudication herein provided for or heretofore provided for by said act, the title of which is recited in section four hereof, shall be regarded by any water commissioner in distributing water in times of scarcity thereof, until such time as such party shall have by application to the court having jurisdiction, obtained leave and made proof of the priority of right to which such ditch, canal or reservoir shall be justly entitled, which

leave shall be granted in all cases upon terms as to notice to other parties interested, and on payment of all costs, and upon affidavits or petition sworn to, showing the rights claimed and the ditches, canals and reservoirs, with the names of the owners thereof against which such priority is claimed, nor until a decree adjudging such priority to such ditch, canal or reservoir has been entered, and certificate, such as mentioned in section four hereof, shall have been issued to claimant and presented to the water commissioner. [Section 4 referred to is section 3284.]

Legislation. Sec. 3317. G. S. § 1784. Act 1881 § 22, cited under § 3277.

CITATIONS.

This section cited in holding that the court first acquiring jurisdiction retains it.—*Louden Canal Co. v. Handy D. Co.*, 22 C. 108, 43 P. 537.

This section cited in construing sec. 3313.—*Montrose Canal Co. v. Loutsenhizer Ditch Co.*, 23 C. 236, 48 P. 533.

One who is a party to an adjudication but refuses to offer proof can not thereafter object.—*Crippen v. X. Y. I. D. Co.*, 32 C. 454, 76 P. 796.

A proceeding under this section is not proper where the petitioner was not a party to the original adjudication.—*Broad Run I. Co. v. Deuel etc. Co.*, 47 C. 575, 580, 108 P. 756.

3318. Re-argument—Review—Limitation two years.

SEC. 154. The district court, or judge thereof in vacation, shall have power to order, for good cause shown, and upon terms just to all parties, and in such manner as may seem meet, a re-argument or review, with or without additional evidence, of any decree made under the provisions of this act, whenever said court or judge shall find from the cause shown for that purpose by any party or parties feeling aggrieved, that the ends of justice will be thereby promoted; but no such review or re-argument shall be ordered unless applied for by petition or otherwise within two years from the time of entering the decree complained of.

Legislation. Sec. 3318. G. S. § 1788. Act 1881 § 26, cited under § 3277.

CITATIONS.

The failure of plaintiff to file claim or to ask a review did not raise the legal presumption that he had no rights.—*Greer v. Heiser*, 16 C. 306, 309, 26 P. 770.

This and sec. 3314 do not apply to an original proceeding by a party who has never had his day in court.—*Nichols v. McIntosh*, 19 C. 27, 34 P. 280. (This case modified by *Broad Run Co. v. Deuel Co.*, 47 C. 574, 108 P. 756.)

After the expiration of the time limit the decree cannot be reopened by a party thereto for any material change.—*New Mercier D. Co. v. Armstrong*, 21 C. 361, 40 P. 989. *Boulder & W. D. Co. v. Lower Boulder D. Co.*, 22 C. 119, 43 P. 540. *Montrose Canal Co. v. Loutsenhizer D. Co.*, 23 C. 236, 48 P. 533.

Upon an application under this section the judge may call in a judge from another district.—*Sterling D. Co. v. Kliff etc. Co.*, 24 C. 492, 52 P. 669.

This section cited in holding that on appeal it is too late to object that the referee failed to take the oath.—*Kerr v. Dudley*, 26 C. 458, 58 P. 611.

A party by applying for rehearing and review does not waive his right to an appeal.—*Daum v. Conley*, 27 C. 61, 59 P. 755.

Good cause must be shown for a review and the petition must show that the party has been aggrieved by the decree.—*Crippen-Laurence I. Co. v. Burroughs*, 27 C. 156, 60 P. 487. *Peterson v. Durkee*, 15 A. 260, 62 P. 371.

This section cited in holding that an appeal would not lie after the two years.—*Upper Platte etc. Co. v. Ft. Morgan Co.*, 27 C. 215, 60 P. 484.

The right to open a decree for a cause existing at the time it was rendered is conditioned upon proper objections having been made.—*Rio Grande L. Co. v. Prairie Ditch Co.*, 27 C. 229, 60 P. 727.

One who appears and files his claim but offers no proof is concluded by the decree unless he applies for a review. A void decree may be set aside.—*Crippen v. X. Y. Irr. Co.*, 32 C. 449, 454, 76 P. 795.

Where a conditional decree was entered and subsequent application made to hear further proof this section did not apply.—*Waterman v. Hughes*, 33 C. 275, 80 P. 892.

A decree when first entered is not final because of the provisions for review and appeal.—*Fort Lyon C. Co. v. Ark. Val. etc. Co.*, 39 C. 337, 90 P. 1025.

A party to an adjudication must apply for a review within two years.—*Child v. Whitman*, 7 A. 120, 42 P. 601.

CITATIONS CONTINUED

On application for review the court is authorized to vacate the decree pending the review. On dismissal of the application the decree should be re-entered.—*Peterson v. Durkee*, 15 A. 260, 62 P. 371.

A conveyance of a water right under a certain priority held to have conveyed a right under a revised decree.—*Magill v. Hyatt*, 20 A. 526, 80 P. 473.

3319. Sheriff not serve writ outside his county.

SEC. 155. Nothing herein contained shall be construed to authorize any sheriff to serve any writ outside the limits of his own county, or give effect to any record by way of notice or otherwise, in any county other than that in which he belongs.

Legislation. Sec. 3319. G. S. § 1800. Act 1879 p. 106 § 35, cited under § 3175.

3320. Fees of district clerk—How audited—Paid.

SEC. 156. The fees of the clerk of the district court for a service rendered under this act shall be paid by the counties interested in the same manner as the fees of the water commissioners, upon the said clerk rendering his account certified by the district judge to the board or boards of county commissioners of the county or counties embracing the water district in case of which the services shall have been rendered.

Legislation. Sec. 3320. Act 1879 p. 108 § 43, cited under § 3175. G. S. § 1861.

V. STATE ENGINEER.**Section.**

- 3321. State engineer—Appointment—Office—Salary—Oath—Bond.
- 3322. General duties of state engineer.
- 3323. Shall approve designs and plans.
- 3324. Supervision over division engineers and water commissioners.
- 3325. Additional duties of engineer.
- 3326. Appoint deputy for special work.
- 3327. Deputies—Appointment—Oath—Engineer liable for acts.
- 3328. Pay of deputies and assistants.
- 3329. Require owner of ditch to construct and maintain a measuring weir.

V. STATE ENGINEER.

Continued.

Section.

3330. Cubic foot per second, unit of measurement.

3331. Report of state engineer.

3332. Fees collected by state engineer.

3333. Fees deposited with state treasurer.

3334. Application of fees.

3334-A. State engineer record data as to water supply.

3321. State engineer—Appointment—Office—Salary—Oath—Bond.

SEC. 157. The governor shall appoint a state engineer, who shall hold his office for the term of two years, or until his successor shall be appointed and qualified. The governor may at any time, for cause shown, remove said state engineer. The said state engineer shall have his office at the state capitol, in suitable rooms to be provided for him by the secretary of state, who shall furnish him with suitable furniture, postage and such proper and necessary stationery, books and instruments as are required to best enable him to discharge the duties of his office. He shall be paid a salary of three thousand dollars per annum, payable monthly by the state treasurer, on warrants drawn by the state auditor. The said state engineer shall, before entering on the discharge of his duties, take and subscribe to an oath, before the judge of a state court of record, to faithfully perform the duties of his office, and file said oath with the secretary of state, together with his official bond, in the penal sum of ten thousand dollars, said bond to be signed by sureties approved by the secretary of state and conditioned upon the faithful discharge of the duties of his office and for delivering to his successor, or other officer authorized by the governor to receive the same, all moneys, books, instruments and other property belonging to the state then in his possession or under his control, or with which he may be legally chargeable as such state engineer.

Legislation. Sec. 3321. Act 1889 p. 371 § 1, entitled:

AN ACT

Providing for the Appointment of a State Engineer, Defining His Powers

and Duties, Fixing His Salary and the Expenses of His Office, and Repealing Sections Six, Seven, Eight, Nine, Ten, Eleven and Twelve of An Act Entitled "An Act to Provide for the Appointment of a State Engineer, and to Define His Duties and Regulate His Pay, and for the Appointment of His Assistants, and the Establishment of Water Divisions," Approved March 5, 1881.

The sections repealed mentioned in the title were G. S. §§ 1807-1813. Act 1881 p. 119 §§ 6-12.

CITATIONS.

The governor could appoint the state hydraulic engineer under G. S. Sec. 1807 without the consent of the senate.—*In re question propounded by Governor*, 12 C. 400, 21 P. 488.

3322. General duties of state engineer.

SEC. 158. The state engineer shall have general supervising control over the public waters of the state. He shall make or cause to be made careful measurements of the flow of the public streams of the state from which water is diverted for any purpose, and compute the discharge of the same. He shall also collect all necessary data and information regarding the location, size, cost and capacity of dams and reservoirs hereafter to be constructed, and like data regarding the feasibility and economical construction of reservoirs on eligible sites, of which he may obtain information, and the useful purposes to which the water from the same may be put. He shall also collect all data and information regarding the snow-fall in the mountains each season, for the purpose of predicting the probable flow of water in the streams of the state, and publish the same.

[Duties appertaining to reservoirs. Sections 3205-3214.]
[Report of engineer on desert land projects. Section 5145.]

Legislation. Sec. 3322. Act 1889 § 2, cited under § 3321.

CITATIONS.

This section cited in an action by the superintendent of irrigation against a county for his compensation.—*Chew v. Fremont County*, 18 A. 165, 70 P. 765.

3323. Shall approve designs and plans.

SEC. 159. The state engineer shall approve the designs and plans for the construction and repair of all dams or reservoir

embankments which are built within the state, which equal or exceed ten feet in vertical height.

[Office of division superintendent abolished and division engineers provided in their place. Section 3335.]

Legislation. Sec. 3323. Act 1889 § 3, cited under § 3321.

3324. Supervision over division engineers and water commissioners.

SEC. 160. The state engineer shall have general charge over the work of the division water superintendents and district water commissioners, and shall furnish them with all the data and information necessary for the proper and intelligent discharge of the duties of their offices, and shall require them to report to him at suitable times their official actions, and require of them annual statements, on blanks to be furnished by him, of the amount of water diverted from the public streams in their respective divisions and districts, and such other statistics as, in the judgment of the state engineer, will be of benefit to the state.

Legislation. Sec. 3324. Act 1889 § 4, cited under § 3321.

3325. Additional duties of engineer.

SEC. 161. The state engineer shall, without any extra pay or compensation beyond the salary provided in section one of this act, perform all duties imposed upon him by law, and shall when called upon by the governor, give his counsel and services, without extra pay or compensation, to any state department or institution; *Provided, however,* That he shall be allowed all actual traveling and other necessary expenses, and the actual cost of preparing necessary maps and drawings, which actual expenses shall be paid by the department or institution requiring his services.

Legislation. Sec. 3325. Act 1889 § 6, cited under § 3321.

3326. Appoint deputy for special work.

SEC. 162. The state engineer shall, on request of any party interested and on payment of his per diem charges and reasonable expenses, appoint a deputy to measure, compute and ascertain all necessary data of any canal, dam, reservoir or other construction,

as required or as may be desired to establish court decrees, or for filing statements, in compliance with law, in the county clerk's records.

Legislation. Sec. 3326. Act 1889 § 5, cited under § 3321.

3327. Deputies—Appointment—Oath—Engineer' liable for acts.

SEC. 163. The state engineer may appoint one or more deputies, as he may think proper, for whose official actions he shall be responsible, and may revoke such appointments at his pleasure; and he may also deputize any person to do a particular service; and the said state engineer and his sureties shall be responsible on his official bond for the default or misconduct of his deputies. Such appointment and revocation shall be in writing, under the signature and official seal of the state engineer, and shall be filed in the office of the secretary of state. All persons appointed shall take and subscribe to an oath, before the judge of a court of record, to truly perform the duties of the office to which he is appointed; and such oath shall be filed with his appointment in the office of the secretary of state. In addition to the deputies provided for in this section, the state engineer may employ such assistance in performing the work of his office as he may deem necessary.

Legislation. Sec. 3327. Act 1889 § 7, cited under § 3321.

3328. Pay of deputies and assistants.

SEC. 164. The pay of the deputies and assistants of the state engineer shall not exceed the sum of six dollars per day for each day employed, together with actual expenses, and the whole amount which may be so expended is hereby limited to the sum of forty-five hundred dollars each year.

Legislation. Sec. 3328. Act 1889 § 8, cited under § 3321.

3329. Require owners of ditches to construct and maintain a measuring weir.

SEC. 165. For the more accurate and convenient measure-

ment of any water appropriated pursuant to any judgment or decree rendered by any court establishing the claims of priority of any ditch, canal or reservoir, the owners thereof may be required by the state engineer to construct and maintain, under the supervision of the state engineer, a measuring weir or other device for measuring the flow of the water at the head of such ditch, canal or reservoir, or as near thereto as practicable. The state engineer shall compute, and arrange in tabular form, the amount of water that will pass such weir or measuring device at the different stages thereof, and he shall furnish a copy of a statement thereof to any water superintendents or commissioners having control of such ditch, canal or reservoir.

Legislation. Sec. 3329. Act 1889 § 9, cited under § 3321.

3330. Cubic foot per second, unit of measurement.

SEC. 166. The state engineer shall use in all his calculations, measurements, records and reports, the cubic foot per second as the unit of measurement of flowing water, and the cubic foot as the unit of measurement of volume.

[Cubic inch of water defined. Section 7026.]

Legislation. Sec. 3330. Act 1889 § 10, cited under § 3321.

3331. Report of state engineer.

SEC. 167. The state engineer shall prepare and render to the governor a full and true report of his work, regarding all matters and duties devolving upon him by virtue of his office, which report shall be delivered at the time when the reports of other state officers are required by law to be made, in order that it may be laid before the general assembly at each regular session thereof.

[Act of 1889, sections 3321-3331, repealed, G. S., sections 1807-1813.]

Legislation. Sec. 3331. Act 1889 § 11, cited under § 3321.

CITATIONS.

A joint resolution by the senate and house for the printing of the state engineer's report did not empower the secretary of state to create a debt against the state.—*Henderson v. Collier & Cleveland Co.*, 2 A. 253, 30 P. 41. (Affirmed 18 C. 259, 32 P. 417.)

3332. Fees collected by state engineer.

SEC. 168. Fees shall be collected by the state engineer for work done in his office as follows:

For the examination and filing of each map and statement describing a claim or claims to a water right, \$10.00 if the amount of water claimed does not exceed twenty (20) cubic feet per second, and an additional \$1.00 for each cubic foot per second claimed in excess of twenty.

For the examination and filing of each map and statement describing a claim to water for storage, \$10.00 for each one thousand (1,000) acre feet or fraction thereof of storage capacity claimed.

For filing each judicial decree ordering the transfer of a water right or the change of a point of diversion, \$2.00.

For each certificate, other than those which may be required in the case of original filings of claims to water rights, requiring official signature and seal, \$1.00.

For the examination and filing of each set of plans and specifications for a reservoir, dam, embankment or other structure for the purpose of storing or utilizing water, \$1.00 for each \$1,000.00 or fraction thereof of the estimated cost of such structure or structures.

For copies of maps, \$1.00 for each hour or fraction thereof necessary for the making of such copies.

For each blue print of a tracing forming a public record, \$2.00.

For copies of records, twenty (20) cents per folio.

For rating any ditch, canal, reservoir inlet or outlet, at the request of the owner or owners thereof or of any agent or employee having control of the same, \$10.00 per day and actual expenses for each day actually and necessarily employed by the hydrographer in making such rating.

[Fee for inspection of reservoir. Sections 3206 and 3211.]

Legislation. Sec. 3332. Sec 1 of Act of 1911, S. B. No. 537. Approved May 30th, with Emergency Clause. Substitute for § 3332 which was § 1 of Act of 1903 p. 294, entitled:

AN ACT

To Provide for the Collection of Fees in the Office of the State Engineer, for Depositing Such Fees with the State Treasurer, the Creation of a Gauging [Gauging] Fund, the Uses to Which Such Fund May Be Put, and the Repeal of All Acts in Conflict Herewith.

3333. Fees deposited with state treasurer.

SEC. 169. At the end of each month the sum of the fees collected during the month, as provided for in section 1 of this act, shall be deposited with the state treasurer, with a complete statement showing the amounts thus received and the sources from which they are derived, and the said amounts shall be credited by the said treasurer to a fund which shall be known as a gauging fund.

[Section 1 referred to is section 3232.]

Legislation. Sec. 3333. Act 1903 § 2, cited under § 3332.

3334. Application of fees.

SEC. 170. The amount credited to the gauging fund created as hereinbefore provided shall be available for the payment of expenses and salaries required for work of gauging streams, rating ditches, making seepage measurements, or other work proper and necessary to the administration of the state engineer's office. Warrants for the payment of such salaries and expenses shall be issued by the auditor of state upon presentation of vouchers properly drawn and approved by the state engineer.

Legislation. Sec. 3334. Sec. 2 of Act of 1911, cited under § 3332. Substitute for § 3334 which was Act of 1903 p. 295 § 3.

3334-A. State engineer record data as to water supply.

SEC. 170a. That the state engineer shall make hydrographic surveys and investigations of each stream, system and source of water supply in the state, beginning with those most used, and obtaining and recording all available data pertaining to the water supply of this state. He is hereby authorized to co-operate with the United States geological survey for this purpose.

Legislation. Sec. 3334A. Act 1909 p. 162 § 1, entitled:

AN ACT

Providing that the State Engineer Shall Make Hydrographic Surveys and Investigations of Each Stream, System and Source of Water Supply in the State of Colorado, and Making an Appropriation Therefor.

VI. IRRIGATION DIVISIONS—DIVISION ENGINEERS.

Section.

- 3335. Appointment of division engineers—Boundaries of irrigation divisions.
- 3336. Jurisdiction of irrigation divisions Nos. 4 and 5.
- 3337. Examination to fill vacancy.
- 3338. Application for appointment as division engineer.
- 3339. Qualifications of applicant.
- 3340. Examination of papers—Rating certified to governor.
- 3341. Term of office of division engineer.
- 3342. Salaries and expenses of engineers.
- 3343. Oath of office—Bond.
- 3344. Powers and duties of engineer—Appeal from rulings.
- 3345. Charges against water commissioner—Trial—Suspension—Removal.
- 3346. Certified copy of priority decree furnished engineer.
- 3347. Meeting of division engineers—Reports.
- 3348. Report of water commissioners—Contents.
- 3349. Clerk furnish copies of decrees to division engineer.
- 3350. Commissioners report to engineer.
- 3351. Owner report failure to receive water—Duty of engineer.
- 3352. Fees of district clerk.

3335. Appointment of division engineers—Boundaries of irrigation divisions.

SEC. 171. The office of the superintendent of irrigation is hereby declared abolished, and in place of such superintendents the governor shall, subject to confirmation by the senate, appoint an irrigation division engineer for each irrigation division now existing or which may hereafter be created. Each person so appointed shall have been a resident of Colorado for at least five (5) years, and shall have been a resident of the division, over which he shall have jurisdiction, for at least two (2) years prior to his appointment, unless there shall have been no applicant who is qualified for appointment in said division, in which case any qualified resident of any other irrigation division may be appointed. One of said

officers shall have jurisdiction over irrigation division No. 1, comprising all water districts now or hereafter to be formed, consisting of lands in the state of Colorado irrigated by water taken from the South Platte river, the North Platte river, the Big Laramie river, the North and Middle forks of the Republican river, Sandy and Frenchmans creeks, and the streams draining into the said rivers and creeks; one over irrigation division No. 2, comprising all water districts now or hereafter to be formed, consisting of lands irrigated by water taken from the Arkansas river, the South Fork of the Republican river, the Smoky Hill river and the Dry Cimarron river, and the streams draining into the said rivers; one over irrigation division No. 3, comprising all water districts now or hereafter to be formed, consisting of lands watered from the Rio Grande river and its tributaries; one over irrigation division No. 4, which is hereby created, comprising all water districts now, or hereafter to be formed, consisting of lands in the state of Colorado watered by the San Juan river and its tributaries. and, also, all water districts now, or hereafter to be formed, consisting of lands in the state of Colorado watered by the Grand river and its tributaries, below the mouth of Roan creek, including water district No. 42, and one over irrigation division No. 5, which is hereby created, comprising all water districts now or hereafter to be formed, consisting of lands in the state of Colorado watered by the Grand river and its tributaries above and including Roan creek and water districts Nos. 39 and 45, and, also, all water districts now, or hereafter to be formed, consisting of lands in the state of Colorado irrigated by water taken from the Green river and its tributaries, respectively.

The office of the irrigation division engineers of the several divisions shall be located in the following cities: for division No. 1 at the state capitol building in Denver; for division No. 2 in Pueblo; for division No. 3 in Alamosa; for division No. 4 in Montrose; for division No. 5 in Glenwood Springs; for any division which may hereafter be created, in such place as may be designated by the act creating the division. The secretary of state shall provide a suitable office for each division engineer and shall supply him with suitable furniture and office equipment for the proper transaction of the business and preservation of the

records of the irrigation division. Such office and equipment shall be used exclusively for the conduct of business of the state of Colorado and for no private business of any character. The office shall be open during all ordinary business hours except when the duties of the division engineer require his absence, in which instance notice of his whereabouts shall be posted at said office.

Legislation. Sec. 3335. Sec. 1 of Act of 1911, S. B. No. 531. Approved May 5. Substitute for § 3335, which was § 1 of Act of 1903 p. 281, entitled:

AN ACT

Concerning Irrigation Division Engineers and Other Irrigation Officials, and Repealing All Acts in Conflict Herewith.

The repealing section 15 of this Act of 1903 p. 288 in connection with its text abrogated G. S. §§ 1802-1805 and their amendments, Act 1889 p. 211 § 8, Act 1889 p. 472 § 4.

Also Act 1885 p. 256 § 2, Act 1887 p. 313 § 1, Act 1887 p. 295 §§ 1-6, Act 1889 p. 210 § 1.

CITATIONS.

The act of 1887 p. 295 providing for a superintendent of irrigation, held constitutional and several of its sections cited and construed.—*Farmers' I. D. Co. v. Agricultural D. Co.*, 22 C. 517-529, 45 P. 446.

In an action by the superintendent against a county for his services his title to office could not be collaterally attacked.—*Montezuma County v. Wheeler*, 39 C. 212, 89 P. 51. •

In an action to restrain the water commissioner from closing head gates the act of 1887 p. 295 was held constitutional.—*McLean v. Farmers High Line Co.*, 44 C. 199, 98 P. 21.

Liability of counties under the acts of 1887 and 1889 for their pro rata share of the salary of the superintendent.—*Chapman v. Phillips County*, 17 A. 237, 68 P. 134. *Chew v. Fremont County*, 18 A. 164, 70 P. 764.

3336. Jurisdiction of irrigation divisions Nos. 4 and 5.

SEC. 172. Said water districts Nos. 39 and 70 shall be and remain in irrigation division No. 5 and said water district No. 42 shall be and remain in irrigation division No. 4.

Legislation. Sec. 3336. Act 1905 p. 243 § 4, entitled:

AN ACT

Concerning Water Districts Nos. 39, 42 and 70, in the State of Colorado.

3337. Examination to fill vacancy.

SEC. 173. The state engineer shall hold examinations whenever a vacancy exists, and such examinations shall be held in at least one place in the territory comprising the division, or divisions, where any vacancy or vacancies exist, and twenty days prior to the date fixed for any such examinations he shall cause notices, for a period of one week, to be inserted in one daily paper of general circulation in any irrigation divisions where any vacancy or vacancies exist; or, if there be no daily paper, then in one weekly paper in the said division.

Legislation. Sec. 3337. Act 1903 p. 282 § 2, cited under § 3335.

The text in context with the rest of the Act repealed by implication Act 1887 p. 295 § 1.

3338. Application for appointment as division engineer.

SEC. 174. Any person desiring the appointment of irrigation division engineer may file with the state engineer a request for an examination as to his qualifications, and the state engineer shall thereupon notify the applicant of the time and place where the next examination is to be held, at which place the applicant must present himself at the time specified, prepared to take such examination.

Legislation. Sec. 3338. Act 1903 § 3, cited under § 3335.

3339. Qualifications of applicant.

SEC. 175. Such examinations shall be for the purpose of determining the qualifications of applicants, and shall comprise:

First—Questions on the measurement of water, which shall include tests in the actual measurement of water in the field, on a basis of 30 per cent. of the total.

Second—Questions on the laws and customs relative to irrigation and water rights in Colorado, and including questions relating to the local conditions of the division for which the examination is being held, on a basis of 30 per cent. of the total.

Third—Questions on his experience and the extent of his practice in matters relating to the use of water in irrigation or

for other beneficial purposes, on a basis of 40 per cent. of the total.

Legislation. Sec. 3339. Act 1903 § 4, cited under § 3335.

3340. Examination of papers—Rating certified to governor.

SEC. 176. The state engineer shall examine and rate the examination papers of each applicant, and shall certify to the governor a list of names of all those receiving a rating of 70 per cent. or over, together with the markings of each, and from this list the governor shall, subject to confirmation by the senate, appoint persons to fill vacancies; *Provided*, That such list shall hold good for a period of two years from the date of its certification to the governor, but no longer; *And, provided, further*, That nothing herein contained shall prevent any candidate from taking later examinations for the purpose of reinstatement or of improving his rating.

Legislation. Sec. 3340. Act 1903 § 5, cited under § 3335.

3341. Term of office of division engineer.

SEC. 177. Any irrigation division engineer appointed as hereinafore provided, shall hold office for a term of four years, or until his successor shall have been appointed and qualified, and shall be removed only for malfeasance in office, incompetency, or neglect of duty.

Legislation. Sec. 3341. Sec. 2 of Act of 1911, cited under § 3335 which was Act of 1903 p. 283 § 6.

Substitute for § 3341, which was § 6 of Act of 1903 p. 283. The amendment enlarged the term of office from two to four years.

3342. Salaries and expenses of engineers.

SEC. 178. The division engineer for each of divisions No. 1 and No. 2 shall receive a salary of two thousand five hundred dollars (\$2,500) per annum, and the division engineer for each of divisions No. 3, No. 4 and No. 5 shall receive a salary of one thousand five hundred dollars (\$1,500) per annum, payable monthly in equal installments, upon vouchers approved by the state engineer, drawn upon the auditor of state, by whom warrants shall

be drawn upon the state treasurer therefor. He shall also receive reimbursement for all actual and necessary expenses incurred in the performance of his duties, which expenses shall not exceed the sum of five hundred (\$500.00) dollars per annum, and such expenses shall be paid monthly upon vouchers, approved by the state engineer, drawn upon the auditor of state by whom warrants shall be drawn upon the state treasurer therefor.

Legislation. Sec. 3342. Sec. 3 of Act of 1911, cited under § 3335. Substitute for § 3342, which was § 7 of Act of 1903 p. 283.

3343. Oath of office—Bond.

SEC. 179. Before entering upon the duties of his office the irrigation division engineer shall subscribe to an oath before the judge of a court of record that he will faithfully perform the duties of his office, and shall file said oath with the secretary of state, together with his official bond in the penal sum of five thousand (5,000) dollars, said bond to be signed by sureties approved by the secretary of state, and conditioned upon the faithful discharge of the duties of his office and for delivery to his successor or to the state engineer, upon demand, all moneys, books, instruments and other property belonging to the state or to the irrigation divisions under his control.

Legislation. Sec. 3343. Act 1903 § 8, cited under § 3335.

3344. Powers and duties of engineer—Appeal from rulings.

SEC. 180. The duties of the irrigation division engineer shall be as follows: He shall be governed by all acts heretofore enacted relative to superintendents of irrigation and shall have general control over the water commissioners of the several districts within his division. He shall, under the general supervision of the state engineer, execute the laws of the state relative to the distribution of water, in accordance with the right of priority of appropriation, as established by judicial decrees.

He shall, in the distribution of water, be governed by the regulations of this act, and acts that are now in force, but for the better discharge of his duties, he shall have the authority to make such other regulations to secure the equal and fair distribution of

water, in accordance with the rights of priority of appropriation, as may, in his judgment, be needed in his division; *Provided*, Such regulations shall not be in violation of any part of this act, or other laws of the state, but shall be merely supplementary to and necessary to enforce the provisions of the general laws and amendments thereto.

Any person, ditch company, or ditch owner, who may deem himself injured or discriminated against by any such order or regulation of such irrigation division engineer shall have the right to appeal from the same to the state engineer, by filing with the state engineer a copy of the order or regulation complained of, and a statement of the manner in which the same injuriously affects the petitioner's interest. The state engineer shall, after due notice, hear whatever testimony may be brought forward by the petitioner, either orally or by way of affidavits, and through the irrigation division engineer shall have power to suspend, amend or confirm the order complained of.

He shall have the right to call out any water commissioner of any water district within his division, at any time he may deem it necessary, and he shall have the power to perform the regular duties of water commissioner in all districts within his division.

Each irrigation division engineer shall devote his entire time to the work of his office and in stream measurement, ditch and canal rating, examination of ditches and reservoirs, collection of information relating to the supply and use of water, proper preservation and indexing of data and records and any other duties which may be of him required by law or directed by the state engineer, or which will tend to facilitate and improve the distribution and use of water within his division. He shall require the water commissioners to make annual reports as required by law, on or before the 15th day of November of each year. All records and data collected by the division engineer shall be the property of the state of Colorado and shall be open to public examination and use during all business hours, except when necessarily absent as in section 1 of this act provided, and it shall be unlawful for any division engineer to engage in any private engineering prac-

tice and he shall not hold or perform the duties of any other business or other office.

[Duties of superintendent of irrigation are defined in L. '87, p. 295, and so far as not superseded are found in this compilation as sections 3349-3352.]

Legislation. Sec. 3344. Sec. 4 of Act of 1911, cited under § 3335.

Substitute for § 3344, which was § 9 of Act of 1903 p. 284, which superseded §§ 2, 4 and 8 of Act of 1887 p. 295.

CITATIONS.

Secs. 2 and 4 of the act of 1887 p. 295 cited in holding that the power conferred upon superintendents is a part of the police power of the state. It is executive and not judicial.—*Farmers' I. D. Co. v. Agricultural D. Co.*, 22 C. 517, 45 P. 446.

Section 2 of the act of 1887 cited in an action to enjoin the water commissioner from closing head gates.—*McLean v. Farmers' High Line Co.*, 44 C. 190, 98 P. 18.

Duties and powers of superintendent and engineer considered in an action by superintendent against a county for salary.—*Chew v. Fremont County*, 18 A. 165, 70 P. 765.

3345. Charges against water commissioner—Trial—Suspension—Removal.

SEC. 181. Charges made against any water commissioner for malfeasance in office, neglect of duty, or incompetency to fulfill the duties incumbent upon him, shall be made to the division engineer in writing, setting forth the specific charges against him, who shall hold a fair and impartial trial, after five days' notice to such water commissioner, upon whom a written copy of the charges shall be served. At such trial such water commissioner shall be permitted to appear in person and by counsel, and introduce evidence. Should such water commissioner be found guilty of any of the offenses charged, then, and in that case only, the irrigation division engineer having jurisdiction is hereby empowered to suspend him. All such investigations shall be tried and determined within five days from the date set for trial, and at which trial all oral testimony shall be reduced to writing; *Provided*, That either party may take depositions anywhere in the state and may have them read at said trial by giving the opposite party twenty-four hours' notice of the time and place and names of the parties whose depositions will thus be taken.

Upon such suspension the division engineer shall, within ten days, file all pleadings, papers and testimony with the state engineer for review; whereupon the state engineer shall appoint a competent deputy to at once assume control of the district of the water commissioner so suspended. The said deputy shall retain such control until the disability of the commissioner is removed or a new commissioner is appointed and qualified, and the said deputy shall be paid for his services from the state engineer's assistants' fund. The state engineer shall review the action of the division engineer as expeditiously as possible, and within thirty days from the time of receiving such papers, shall submit his findings to the governor, for his action.

In case such suspension of any water commissioner be recommended to be made permanent by the state engineer in his findings, the governor shall, upon the recommendation of the board or boards of county commissioners, as provided by law, forthwith appoint some suitable and competent person to fill such vacancy.

The person or corporation making any such charges against any water commissioner shall furnish a good and responsible bond in such reasonable sum as may be fixed by the division engineer, conditioned for the payment of the reasonably necessary expenses incurred by the water commissioner in case the charges preferred against him are not sustained by the division engineer.

All division engineers shall be under the control and supervision of the state engineer, and may have charges preferred against them in the same manner, and such charges may be heard and determined by the state engineer upon the same conditions herein provided for like proceedings against the water commissioner.

Legislation. Sec. 3345. Act 1903 p. 285 § 10, cited under § 3335.

3346. Certified copy of priority decrees furnished engineer.

SEC. 182. The clerk of any court in this state issuing judicial decrees fixing the priorities of appropriation of water for irrigation and other beneficial purposes in any of such divisions, shall within ten days after such decrees have been entered, forward by registered mail one certified copy of said decree to the state en-

gineer, and one certified copy to the irrigation division engineer having jurisdiction over the water district in which said decree shall have been entered, as heretofore provided by law in the case of superintendents of irrigation. Immediately upon receipt of said certified copies of such decrees, both the state engineer and said division engineers shall promptly file and preserve the same among the official records in the office of each said officials and such division and state engineers shall make a tabulated statement of such decrees, in uniform books to be prepared for such purpose by the state engineer.

Legislation. Sec. 3346. Sec. 5 of Act of 1911, cited under § 3335.

Substitute for § 3346, which was § 11 of Act of 1903 p. 287.

Sec. 6 was the General Repeal and Sec. 7 was the Emergency Clause.

3347. Meetings of division engineers—Reports.

SEC. 183. There shall be held in the office of the state engineer in November of each year a meeting of the irrigation division engineers and of the state engineer and his chief assistant, at which meeting the reports of the irrigation division engineers shall be presented and a general discussion had of the matters which have transpired during the previous season, and at which a program of the work for the ensuing season shall be discussed and determined upon.

The reports filed with the state engineer shall include all correspondence for the season on all business and official acts for the season last past, and shall include the reports of the water commissioners, as hereinafter defined, and other data and information.

Legislation. Sec. 3347. Act 1903 § 12, cited under § 3335.

3348. Report of water commissioners—Contents.

SEC. 184. It shall be the duty of each irrigation division engineer to prepare and tabulate the reports of the water commissioners in his division, which reports shall contain a statement of the actual carrying capacity and the amount of water actually carried by each ditch or canal in his district for each and every day when water was being so carried, the total number of

acres lying under each ditch or canal and the number of acres actually irrigated therefrom. It shall also contain a statement of the kind of crops and the acreage under each decreed ditch or canal, the amount of water stored in each reservoir, the amount used therefrom, with the dates of such storage and use, and the same shall be on blanks, or in books, prepared for that purpose and furnished by the state engineer. They shall contain a written statement of the official acts of the commissioners, and other matters of interest and use, and shall be duly subscribed and sworn to and filed with the irrigation division engineer on or before the 15th day of November of each year.

Legislation. ¹Sec. 3348. Act 1903 § 13, cited under § 3335.

3349. Clerk furnish copies of decrees to division engineer.

SEC. 185. Within thirty days after his appointment, said superintendent of irrigation shall send to the clerk of the district court, within his division, of such counties as have had rendered by the district court of such county, judicial decrees, fixing the priorities of appropriation of water for irrigation purposes for any water district, a notification of his appointment to such office, and shall request of the said clerk a certified copy of every decree of the district court establishing priorities of appropriation of water used for irrigation purposes within that district. Thereupon, it shall be the duty of such clerk, within ten days after the receipt of such request from said superintendent of irrigation, to prepare a certified copy of all decrees of such district court establishing priorities of water rights made within that district, under the provisions of the general statutes of the state of Colorado, and transmit the same to the superintendent of irrigation requesting it. Said superintendent of irrigation shall then cause to be prepared a book to be entitled, "The Register of Priorities of Appropriations of Water Rights for Water Division No. . . . , State of Colorado," within which he shall enter and preserve such certified copies of decrees. Said superintendent of irrigation shall, from such certified copies of decrees, make out a list of all the ditches, canals and reservoirs entitled to appropriations of water within his division, arranging and numbering the same in

consecutive order, according to the dates of their respective appropriations within his division, and without regard to the number of such ditches, canals or reservoirs may bear within their respective water districts. Said superintendent of irrigation shall make from his register a tabulated statement of all the ditches, canals and reservoirs in his division whose priorities have been decreed, which statement shall contain the following information concerning each ditch, canal and reservoir arranged in separate columns. The name of the ditch, canal or reservoir; its number in his division; the district in which it is situated; the number of it in its proper district; and the number of cubic feet of water per second to which it is entitled, and such other and further information as he may deem useful to the proper discharge of his duty. In case any decrees of court establishing priorities of appropriation of water for irrigation purposes are made after the transmittal of the copy of previous decrees to the superintendent of irrigation, it shall be the duty of the clerk of the court wherein such decree is rendered, to transmit to the superintendent of irrigation of the division within which said county is situated, within ten days after it is rendered, a copy of such decree, and the superintendent of irrigation shall enter the same in his register, such register to be filed and kept in the office of the state engineer.

[Division engineers succeeded the superintendent of irrigation. See section 3335.]

Legislation. Sec. 3349. Act 1887 p. 297 § 7, entitled:

AN ACT

Providing for the Appointment of Superintendents of Irrigation for the Water Divisions of This State; Fixing Their Compensation and Providing for the Payment Thereof; Prescribing Their Duties, and Requiring a Bond for the Faithful Performance of Such; Requiring Clerks of District Courts to Furnish Such Superintendents With Certain Certified Decrees, and Providing for the Payment of Such Clerk's Fees.

CITATIONS.

This section cited in an action against the engineer, superintendent and water commissioner and others to restrain an improper distribution of water.—*Farmers' I. D. Co. v. Agricultural D. Co.*, 22 C. 517, 45 P. 446.

This section cited in considering the rights of an adjudicated ditch to store water during non-irrigating seasons in a reservoir

CITATIONS CONTINUED.

subsequently constructed.—*New Loveland etc. Co. v. Cons. Home etc. Co.*, 27 C. 531, 62 P. 368.

This section cited in an action to restrain the engineer, superintendent and water commissioner from improperly distributing water.—*Farmers' I. D. Co. v. Agricultural D. Co.*, 22 C. 519, 45 P. 446.

3350. Commissioners report to engineers.

SEC. 186. All water commissioners shall make reports to the superintendent of irrigation of their division as often as may be deemed necessary by said superintendent. Said reports shall contain the following information: The amount of water necessary to supply all the ditches, canals and reservoirs of that district; the amount of water actually coming into the district to supply such ditches, canals and reservoirs; whether such supply is on the increase or decrease; what ditches, canals or reservoirs are at that time without their proper supply; the probability as to what the supply will be during the period before the next report will be required, and such other and further information as the superintendent of irrigation of that division may suggest. Said superintendent of irrigation shall carefully file and preserve such reports, and shall, from them, ascertain what ditches, canals and reservoirs are, and what are not, receiving their proper supply of water; and if it shall appear that in any district in that division any ditch, canal or reservoir is receiving water whose priority post-dates that of the ditch, canal or reservoir in another district, as ascertained from his register, he shall at once order such post-dated ditch, canal or reservoir shut down and the water given to the elder ditch, canal or reservoir. His orders being directed at all times to the enforcement of priority of appropriation, according to his tabulated statement of priorities, to the whole division, and without regard to the district within which the ditches, canals and reservoirs may be located. The reports of water commissioners by the superintendents of irrigation shall be filed and kept in the office of the state engineer.

[Division engineers succeeded the superintendent of irrigation. See section 3335.]

Legislation. Sec. 3350. Act 1887 § 9, cited under § 3349.

Amended and in part repealed by §§ 3347, 3348.

3351. Owner report failure to receive water—Duty of engineer.

SEC. 187. In case any ditch, canal or reservoir, in any district within such superintendent of irrigation's division, shall fail to receive its regular supply of water, the owner or controller of such ditch, canal or reservoir may report such fact to the water commissioner of that district, who shall immediately apportion the water in his district, and send forthwith by telegram, if necessary, a report of such fact to the superintendent of irrigation of his division, and thereupon it shall be the duty of said superintendent to compare such report with his register, and if any ditch, canal or reservoir of any other district of his division is receiving water to which any ditch, canal or reservoir of any other district is entitled, he shall at once order the shutting down of the post-dated ditches, canals or reservoirs, and the water given to the ditches, canals or reservoirs having the priority of appropriation; *Provided, however*, That nothing in this act shall be construed as interfering with the priority of water for domestic use.

Legislation. Sec. 3351. Act 1887 § 10, cited under § 3349.

CITATIONS.

This section cited in an action to enjoin the engineer, water superintendent and water commissioner from improperly distributing water.—*Farmers' I. D. Co. v. Agricultural D. Co.*, 22 C. 519, 45 P. 446.

This section cited in an action considering the right of a ditch to store water during non-irrigating seasons in a reservoir.—*New Loveland etc. Co. v. Cons. Home etc. Co.*, 27 C. 531, 62 P. 368.

The superintendent is subordinate to the state engineer; his acts are not conclusive unless acquiesced in. *Mandamus asking that gates be closed denied.*—*Farmers' I. D. Co. v. Maxwell*, 4 A. 478, 36 P. 556.

[See note, section 3350.]

3352. Fees of district clerk.

SEC. 188. The expenses and salary of the superintendents of irrigation shall be paid pro rata by the counties interested, in the

same manner as the fees of water commissioners are paid, and the fees of the clerks of the district courts, for services rendered under the provisions of this act, shall also be paid by the counties interested, upon the said clerk rendering his account, certified by the district judge to the boards of county commissioners of the counties embraced in the water divisions in case of which the services have been rendered.

[The division engineers' salaries are provided for in section 3342.]

Legislation. Sec. 3352. Act 1887 § 11, cited under § 3349.

CITATIONS.

Under an action against a county for its pro rata share of the salary of superintendent the evidence held sufficient to establish liability.—*Chapman v. Phillips County*, 17 A. 237, 68 P. 134.

When counties are liable for their pro rata share of the salary of the superintendent.—*Chew v. Fremont county*, 18 A. 164, 70 P. 764.

VII. WATER DISTRICTS—WATER COMMISSIONERS.

A. BOUNDARIES OF WATER DISTRICTS.—3353—3426.

B. WATER COMMISSIONERS.—3427—3439.

A. BOUNDARIES OF WATER DISTRICTS.

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- 3403. District number forty-nine.
- 3404. District number fifty.
- 3405. District number fifty-one.
- 3406. District number fifty-two.
- 3407. District number fifty-three.
- 3408. District number fifty-four.
- 3409. District number fifty-five.
- 3410. District number fifty-six.

A. BOUNDARIES OF WATER DISTRICTS.

Continued.

Section.

- 3411. District number fifty-seven.
 - 3412. District number fifty-eight.
 - 3413. District number fifty-nine.
 - 3414. District number sixty.
 - 3415. District number sixty-one.
 - 3416. District number sixty-two.
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 - 3419. District number sixty-five.
 - 3420. District number sixty-six.
 - 3421. District number sixty-seven.
 - 3422. District number sixty-eight.
 - 3423. District number sixty-nine.
 - 3424. District number seventy.
 - 3425. Same—Expenses of commissioner.
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-

3353. Lands watered constitute districts.

SEC. 189. That the lands now irrigated, or which may be hereafter irrigated from ditches now taking water from the following described rivers or natural streams of the state of Colorado, are hereby declared to constitute irrigation districts.

[Unlawful to cut trees which conserve snow or water in irrigation district. Section 2626.]

Legislation. Sec. 3353. Act 1879 p. 97 § 5, title cited under § 3175.

CITATIONS.

The statutes in terms declare or by implication assume that these districts are restricted to lands within the state.—*Lamson v. Vailles*, 27 C. 204, 61 P. 232.

3354. District number one.

SEC. 190. That water district No. 1 shall consist of all lands in the state of Colorado irrigated by waters taken from that portion of the South Platte river between the mouth of the Cache la Poudre river and the west boundary line of Washington county, and from the streams draining into the said portion of the South Platte river.

Legislation. Sec. 3354. Act 1889 p. 212 § 13, amending Act 1887 p. 303 § 1, which amended Act 1879 p. 91 § 6, cited under § 3175. G. S. § 1742.

CITATIONS.

Upon the division of these districts by legislative act without a saving clause, the district court of a new district became vested with jurisdiction.—*Sterling I. Co. v. Lowney*, 19 C. 597, 36 P. 787.

3355. District number two.

SEC. 191. That district No. 2 shall consist of land irrigated from ditches taking water from the South Platte river and its tributaries, except Big Thompson, St. Vrain and Clear Creek, between the mouth of the Cache la Poudre and the mouth of Cherry Creek.

Legislation. Sec. 3355. Act 1879 p. 97 § 7, cited under § 3175. G. S. § 1743.

3356. District number three.

SEC. 192. That district No. 3 shall consist of all lands irrigated from ditches taking water from the Cache la Poudre and its tributaries.

Legislation. Sec. 3356. Act 1879 p. 98 § 8, cited under § 3175. G. S. § 1744.

3357. District number four.

SEC. 193. That district No. 4 shall consist of all lands irrigated from ditches taking water from the Big Thompson and its tributaries.

Legislation. Sec. 3357. Act 1879 p. 98 § 9, cited under § 3175. G. S. § 1745.

3358. District number five.

SEC. 194. That district No. 5 shall consist of all lands irrigated from ditches taking water from the St. Vrain creek and its tributaries, except the Boulder, its tributaries, and Coal creek.

Legislation. Sec. 3358. Act 1879 p. 98 § 10, cited under § 3175. G. S. § 1746.

3359. District number six.

SEC. 195. That district No. 6 shall consist of all lands irrigated from ditches taking water from the Boulder and its tributaries, and Coal creek.

Legislation. Sec. 3359. Act 1879 p. 98 § 11, cited under § 3175. G. S. § 1747.

3360. District number seven.

SEC. 196. That district No. 7 shall consist of all lands irrigated from ditches taking water from Clear creek and its tributaries.

Legislation. Sec. 3360. Act 1879 p. 98 § 12, cited under § 3175. G. S. § 1748.

3361. District number eight.

SEC. 197. That water district No. 8 shall consist of all lands irrigated by ditches taking water from Cherry creek, Plum creek and Platte river and their tributaries, except Bear creek, above water district No. 2, and below the forks of the north and south branches of the South Platte river, and including all lands and ditches in Douglas County.

Legislation. Sec. 3361. Act 1899 p. 430 § 1, amending Act 1879 p. 98 § 13, cited under § 3175. G. S. § 1749.

3362. District number nine.

SEC. 198. That district No. 9 shall consist of all lands irrigated by ditches taking water from Bear creek and its tributaries.

Legislation. Sec. 3362. Act 1879 p. 98 § 14, cited under § 3175. G. S. § 1750.

CITATIONS.

Clear Creek County is embraced in this district. *Clear Creek County v. McLean* (May 1911), 115 P. 525.

3363. District number ten—New districts to be formed by governor.

SEC. 199. That district No. 10 shall consist of all lands irri-

gated from ditches taking water from the Fountain and its tributaries: *Provided*, That said district shall not extend beyond the limits of El Paso county.

Other irrigation districts may be formed from time to time by the governor, on petition of parties interested.

[The title of the act of April 1, 1885, L. '85, p. 256 purports to amend the above section.]

Legislation. Sec. 3363. Act 1879 p. 98 § 15, cited under § 3175. G. S. § 1751. As stated in the official note the title of the Act purports among other things to amend G. S. § 1751, but does not in the text amend or refer to it at all.

3364. District number eleven.

SEC. 200. Water district No. 11 shall consist of all lands irrigated by water taken from that portion of the Arkansas river above water district No. 12, and from streams draining into the said portion of the Arkansas river.

Legislation. Sec. 3364. Act 1889 p. 369 § 1, amending Act 1885 p. 256 § 4, cited under § 3295.

3365. District number twelve.

SEC. 201 That district No. 12 shall consist of all lands irrigated from ditches or canals taking water from that part of the Arkansas river lying in Fremont county; also, lands irrigated from ditches or canals taking water from the tributaries of said portion of the Arkansas river, except Texas creek and its tributaries, and that part of Grape creek which lies above the south line of said Fremont county.

Legislation. Sec. 3365. Act 1895 p. 198 § 1, amending Act 1893 p. 301 § 1, which amended Act 1885 p. 257 § 5, cited under § 3295.

3366. District number thirteen.

SEC. 202. That district No. 13 shall consist of all lands irrigated from ditches or canals taking water from Texas creek and its tributaries and that part of Grape creek and its tributaries lying in Custer county.

Legislation. Sec. 3366. Act 1895 p. 198 § 2, amending Act 1893 p. 301 § 2, which amended Act 1885 p. 257 § 6, cited under § 3295.

3367. District number fourteen.

SEC. 203. Water district No. 14 shall consist of all lands irrigated by water taken from that portion of the Arkansas river situated within the boundaries of Pueblo county and from the streams draining into the said portion of the Arkansas river, except the St. Charles and Huerfano rivers and their tributaries, and except also that portion of the Fountain embraced in water district No. 10, and the streams draining into the said portion of the Fountain.

Legislation. Sec. 3367. Act 1889 p. 370 § 2, amending Act 1885 p. 257 § 7, cited under § 3295.

3368. District number fifteen.

SEC. 204. That district No. 15 shall consist of all lands irrigated from ditches, or canals, taking water from the St. Charles and its tributaries.

Legislation. Sec. 3368. Act 1885 p. 257 § 8, cited under § 3295.

3369. District number sixteen.

SEC. 205. That district No. 16 shall consist of all lands irrigated from ditches and canals taking water from the Huerfano and its tributaries.

Legislation. Sec. 3369. Act 1885 p. 257 § 9, cited under § 3295.

3370. District number seventeen.

SEC. 206. Water district No. 17 shall consist of all lands irrigated by ditches or canals taking water from that portion of the Purgatoire river north of the north boundary line of Las Animas county; and all lands irrigated by ditches or canals taking water from that portion of the Arkansas river below water district No. 14, and above the mouth of the Purgatoire river, and from the streams running into the said portion of the Arkansas river, except that portion of the Apishapa river and its tributaries, south of the south boundary line of Pueblo county.

Legislation. Sec. 3370. Sec. 3 of Act of 1909 p. 428. Approved April 5. Substitute for § 3370 which was Act of 1889 p. 370 § 3 amending Act of 1885 p. 257 § 10.

The title of the Act of 1909 making the last amendment is perhaps the most cumbersome and involved of all the Statutes of either State or territory. Instead of being entitled "An Act to amend Sections 3370, 3371 and 3372 of the Revised Statutes (1908)" as it should have been the title occupies more than one full page and is so unintelligible as to suggest that it does not comply with the constitutional requirement of Art. V. § 21 that the subject of the bill shall be clearly expressed in the title.

3371. District number eighteen.

SEC. 207. Water district No. 18 shall consist of all lands irrigated by ditches or canals, taking water from that portion of the Apishapa river and its tributaries, south of the south boundary line of Pueblo county.

Legislation. Sec. 3371. Sec. 1 of Act of 1909, cited under § 3370. Substitute for 3371 which was Act of 1885 p. 257 § 11.

3372. District number nineteen.

SEC. 208. Water district No. 19 shall consist of all lands irrigated by ditches or canals, taking water from that portion of the Purgatoire river and its tributaries, south of the north boundary line of Las Animas county.

Legislation. Sec. 3372. Sec. 2 of Act of 1909, cited under § 3370. Substitute for § 3372 which was Act of 1885 p. 257 § 12.

3373. District number twenty.

SEC. 209. Water district No. 20 shall consist of all lands irrigated by water taken from that portion of the Rio Grande above the mouth of the Rio Conejos, and from the streams draining into the said portion of the Rio Grande, including Piedra, Spring, Gato and San Francisco creeks, and all other streams that would in time of flood flow into the said portion of the Rio Grande, although at ordinary stages the waters thereof might not flow upon the surface to the Rio Grande, except Alamosa river and its tributaries and the La Jara and Trinchera creeks and their tributaries; *Provided*, That nothing in this act shall be construed as inconsistent with the provisions of the acts creating water districts numbered twenty-five, twenty-six and twenty-seven.

Legislation. Sec. 3373. Act 1889 p. 218 § 1, amending Act 1887 p. 301 §§ 1, 2, which amended Act 1885 p. 258 §§ 13, 16, cited under § 3295.

CITATIONS.

Whether or not San Francisco creek is a tributary of the Rio Grande river held not important for the statute expressly includes it as a part of the district.—*Presbyterian College v. Poole*, 25 C. 52, 52 P. 1103.

3374. District number twenty-one.

SEC. 210. That district No. 21 shall consist of all lands irrigated from ditches or canals taking water from the Alamosa and La Jara creeks and their tributaries.

Legislation. Sec. 3374. Act 1885 p. 258 § 14, cited under § 3295.

3375. District number twenty-two.

SEC. 211. That district No. 22 shall consist of all lands in the state of Colorado irrigated from ditches or canals taking water from Conejos creek and its tributaries.

Legislation. Sec. 3375. Act 1885 p. 258 § 15, cited under § 3295.

3376. District number twenty-three.

SEC. 212. Water district No. 23 shall consist of all lands in the state of Colorado being, or to be, irrigated from ditches or canals taking water from the South Platte river, and from any of its direct, or indirect, tributaries, at any point or points above water district No. 8, in the said state, and all lands upon the tributaries of the Arkansas river which lie within the boundaries of Park county.

Legislation. Sec. 3376. Act 1899 p. 431 § 1, amending Act 1889 p. 212 § 9, entitled, "An Act Concerning Irrigation."

3377. District number twenty-four.

SEC. 213. Water district No. 24 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Rio Grande between the mouth of the Rio Conejos and the Colorado state line, from the streams draining into the said portion of the Rio Grande and from Costilla creek, and the streams draining into Costilla creek.

Legislation. Sec. 3377. Act 1889 p. 370 § 4, amending Act 1885 p. 258 § 17, cited under § 3295.

3378. District number twenty-five.

SEC. 214. That water district No. 25 shall consist of all lands irrigated by water taken from the San Luis creek and all its tributaries.

Legislation. Sec. 3378. Act 1899 p. 237 § 1, amending Act 1889 p. 370 § 5, which amended Act 1885 p. 258 § 18, cited under § 3295.

3379. District number twenty-six.

SEC. 215. That district No. 26 shall consist of all lands irrigated from ditches, or canals, taking water from the Saguache creek and its tributaries.

Legislation. Sec. 3379. Act 1885 p. 258 § 19, cited under § 3295.

3380. District number twenty-seven.

SEC. 216. That district No. 27 shall consist of all the lands irrigated from ditches, or canals, taking water from Tuttle, Cárnero, La Garita, and all other creeks, and their tributaries, which have their sources of water supply in the La Garita mountains and flow eastward into the San Luis valley.

Legislation. Sec. 3380. Act 1885 p. 258 § 20, cited under § 3295.

3381. District number twenty-eight.

SEC. 217. That district No. 28 shall consist of all lands irrigated from ditches, or canals, taking water from the Tomichi and its tributaries.

Legislation. Sec. 3381. Act 1885 p. 258 § 21, cited under § 3295.

3382. District number twenty-nine.

SEC. 218. That district No. 29 shall consist of all lands lying in the state of Colorado irrigated from ditches, or canals, taking water from that part of the San Juan river, and its tributaries, which lie above the junction of the San Juan river and the Rio Piedra, and including the Rio Piedra.

Legislation. Sec. 3382. Act 1885 p. 359 § 22, cited under § 3295.

3383. District number thirty.

SEC. 219. That district No. 30 shall consist of all lands lying in the state of Colorado irrigated from ditches, or canals, taking water from that part of the Rio Las Animas river, and its tributaries, which lie in Colorado.

Legislation. Sec. 3383. Act 1885 p. 259 § 23, cited under § 3295.

3384. District number thirty-one.

SEC. 220. That district No. 31 shall consist of all lands in the state of Colorado irrigated from ditches, or canals, taking water from that part of the Los Pinos river, and its tributaries, which lie in Colorado.

Legislation. Sec. 3384. Act 1855 p. 259 § 24, cited under § 3295.

3385. District number thirty-two.

SEC. 221. Water district No. 32 shall consist of all lands in the state of Colorado irrigated by water taken from those natural streams which drain into the San Juan river, and are not included in water districts numbers, 29, 30, 31, 33 and 34.

Legislation. Sec. 3385. Act 1889 p. 371 § 6, amending Act 1885 p. 259 § 25, cited under § 3295.

3386. District number thirty-three.

SEC. 222. That district No. 33 shall consist of all lands lying in the state of Colorado irrigated from ditches, or canals, taking water from the La Plata river, and its tributaries, which lie in Colorado.

Legislation. Sec. 3386. Act 1885 p. 259 § 26, cited under § 3295

CITATIONS.

Water may not be appropriated by diversion in this state for use in New Mexico.—*Lamson v. Vailes*, 27 C. 204, 61 P. 232.

3387. District number thirty-four.

SEC. 223. That water district No. 34 shall consist of all lands lying in the state of Colorado, irrigated from ditches or canals

taking water from the Rio Mancos, and its tributaries; and also all lands irrigated from ditches or canals taking water from that part of the Dolores river within the boundaries of said Montezuma county, and from streams draining into said portion of Dolores river.

Legislation. Sec. 3387. Act 1897 p. 175 § 1, amending Act 1885 p. 259 § 27, cited under § 3295.

3388. District number thirty-five.

SEC. 224. That water district No. 35 shall consist of all lands lying in the county of Costilla, in this state, watered by the Trinchera creek, Sand or Medano creek, Big Spring creek, Little Spring creek, Mosca creek, North and South Zapato creeks, Sierra Blanca creek, and all streams draining into the said creeks, and all other streams between said Trinchera creek and said Sand or Medano creek.

Legislation. Sec. 3388. Act 1899 p. 237 § 2, amending Act 1887 p. 307 § 1, entitled:

AN ACT
Concerning Irrigation.

3389. District number thirty-six.

SEC. 225. That district No. 36 shall consist of all the lands irrigated from water taken from the Blue river and its tributaries.

Legislation. Sec. 3389. Act 1887 p. 313 § 3, entitled:

AN ACT
To Create a Water Division, and to Establish the Districts Therein.

3390. District number thirty-seven.

SEC. 226. That district No. 37 shall consist of lands all lying in the state of Colorado irrigated by waters taken from the Eagle river and its tributaries.

Legislation. Sec. 3390. Act 1887 p. 313 § 4, cited under § 3389.

3391. District number thirty-eight.

SEC. 227. That district No. 38 shall consist of all the lands

lying in the state of Colorado irrigated by waters taken from the Roaring Fork river and its tributaries.

Legislation. Sec. 3391. Act 1887 p. 313 § 5, cited under § 3389.

3392. District number thirty-nine.

SEC. 228. The boundaries of water district No. 39 are hereby defined to include all the tributaries of Grand river on the north side thereof, from the mouth of the Roaring Fork river, westerly to the state line; and shall consist of all lands lying in the state of Colorado, irrigated by any and all such tributaries, excepting Roan creek, and its tributaries, and all lands irrigated thereby; and excepting also all lands lying in Mesa county. The said water district No. 39 shall include only all the lands in Garfield county, above described, and which are not irrigated from Roan creek or any of its tributaries.

[For jurisdiction of district court over district No. 39, see section 3426.]

Legislation. Sec. 3392. Act 1905 p. 243 § 1, amending Act 1887 p. 314 § 6, cited under § 3389.

CITATIONS.

The water commissioner of this district cannot claim compensation for services performed in Mesa county in district 42.—*Fravert v. Mesa County*, 39 C. 73, 88 P. 873.

3393. District number forty.

SEC. 229. That water district No. 40 shall consist of all lands irrigated from ditches taking water from Crystal creek and Smith's fork, Escalante creek, and their tributaries, all lands lying within the boundaries of Delta county irrigated from the Gunnison river and its tributaries, (except lands irrigated from the Uncompahgre river and its tributaries), and all lands in the county of Delta and the county of Gunnison irrigated by ditches taking their water from the north fork of the Gunnison river and its tributaries.

Legislation. Sec. 3393. Act 1903 p. 296 § 1, amending Act 1887 p. 311 § 2, entitled:

AN ACT

To Amend Section Two of An Act Entitled "An Act to Create Water Districts Number Forty (40), Forty-one (41), and Forty-two (42)," Approved April 4, 1887.

CITATIONS.

The decree of 1889 and amendment of 1890 in this district held not void but erroneous merely and not subject to collateral attack.—*Lake Fork D. Co. v. Haley*, 28 C. 518, 67 P. 158.

3394. District number forty-one.

SEC. 230. That district No. 41 shall consist of all lands irrigated from ditches or canals taking water from the Uncompahgre river and its tributaries, except so much as are within the boundary lines of Ouray county.

Legislation. Sec. 3394. Act 1887 p. 311 § 3, cited under § 3393.

3395. District number forty-two.

SEC. 231. That district No. 42 shall consist of all lands irrigated from ditches and canals taking water from the Grand and Gunnison rivers and their tributaries within the county of Mesa, except Escalante creek.

Legislation. Sec. 3395. Act 1903 p. 296 § 2, amending Act 1887 p. 311 § 4, cited under § 3393.

CITATIONS.

The water commissioner of district No. 39 can not claim compensation for services performed in this district.—*Fravert v. Mesa County*, 39 C. 73, 88 P. 874.

3396. Same.

SEC. 232. The boundaries of water district No. 42 shall not be construed to include any land heretofore embraced in either of said water districts, 39 or 70.

[For attachment of district 42 for adjudication of priorities, see section 3426.]

Legislation. Sec. 3396. Act 1905 p. 243 § 3, cited under § 3336.

3397. District number forty-three.

SEC. 233. That water district No. 43 is hereby established, and shall consist of all lands irrigated by ditches taking water from the White river and its tributaries.

Legislation. Sec. 3397. Act 1887 p. 307 § 1, entitled:

AN ACT**To Create Water District Number Forty-Three.****3398. District number forty-four.**

SEC. 234. That water district No. 44 shall consist of all lands irrigated by water taken from that portion of the Yampa river above the mouth of the Little Snake river and below the mouth of Fortification creek, and from the streams draining into the said portion of the Yampa river.

Legislation. Sec. 3398. Act 1889 p. 211 § 2, amending Act 1887 p. 300 § 1, entitled:

AN ACT**Concerning Irrigation.****3399. District number forty-five.**

SEC. 235. That water district No. 45 shall consist of all lands situated on the south side of the Grand river and irrigated from ditches or canals taking water from the Grand river and its tributaries, between the mouth of Roaring Fork river and the north line of Mesa county.

Legislation. Sec. 3399. Act 1889 p. 213 § 17, cited under § 3376.

3400. District number forty-six.

SEC. 236. That water district No. 46 shall consist of all lands irrigated by water taken from that portion of the North Platte river above the mouth of Michigan creek, and from the streams draining into the said portion of the North Platte river.

Legislation. Sec. 3400. Act 1889 p. 212 § 10, cited under § 3376.

3401. District number forty-seven.

SEC. 237. That water district No. 47 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the North Platte river between water district No. 46 and the state line of Colorado, and from the streams draining into the said portion of the North Platte river, and from Granite and Encampment creeks and the streams draining into the said creeks.

Legislation. Sec. 3401. Act 1889 p. 212 § 11, cited under § 3376.

3402. District number forty-eight.

SEC. 238. That water district No. 48 shall consist of all lands in the state of Colorado irrigated by water taken from the Big Laramie river and from the streams draining into the said river.

Legislation. Sec. 3402. Act 1889 p. 212 § 12, cited under § 3376.

3403. District number forty-nine.

SEC. 239. That water district No. 49 shall consist of all lands in the state of Colorado irrigated by water taken from the south fork of the Republican river and the Smoky Hill river, and the streams draining into the said rivers.

Legislation. Sec. 3403. Act 1889 p. 471 § 1, entitled:

AN ACT

Concerning Water Districts in the State of Colorado.

3404. District number fifty.

SEC. 240. That water district No. 50 shall consist of all lands irrigated by water taken from the Muddy and Troublesome creeks, and from the streams draining into the said creeks.

Legislation. Sec. 3404. Act 1889 p. 213 § 18, cited under § 3376.

3405. District number fifty-one.

SEC. 241. That water district No. 51 shall consist of all lands irrigated by water taken from the Grand river above the mouth of the Blue river, and from the streams draining into the said portion of the Grand river, except the Muddy and Troublesome creeks and the streams draining into the said creeks.

Legislation. Sec. 3405. Act 1889 p. 213 § 19, cited under § 3376.

3406. District number fifty-two.

SEC. 242. That water district No. 52 shall consist of all lands on the south side of the Grand river irrigated by water taken from the Grand river below the mouth of Blue river and above the mouth of Roaring Fork river, and from the streams draining

into the said portion of the Grand river, except Eagle river and its tributaries.

Legislation. Sec. 3406. Act 1889 p. 213 § 20, cited under § 3376.

3407. District number fifty-three.

SEC. 243. That water district No. 53 shall consist of all lands on the north side of the Grand river irrigated by water taken from that portion of the Grand river below the mouth of Muddy creek and above the mouth of Roaring Fork river, and from the streams draining into the said portion of the Grand river.

Legislation. Sec. 3407. Act 1889 p. 214 § 21, cited under § 3376.

3408. District number fifty-four.

SEC. 244. That water district No. 54 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Little Snake river and its tributaries above the most westerly intersection of said river with the Colorado state line.

Legislation. Sec. 3408. Act 1889 p. 211 § 3, cited under § 3376.

3409. District number fifty-five.

SEC. 245. That water district No. 55 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Yampa river below water district No. 44, and from the streams draining into the said portion of Yampa river not included in water district No. 54.

Legislation. Sec. 3409. Act 1889 p. 211 § 4, cited under § 3376.

3410. District number fifty-six.

SEC. 246. That water district No. 56 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Green river embraced within the boundaries of the county of Routt, and from the streams draining into the said portion of the Green river, except the Yampa river and its tributaries.

Legislation. Sec. 3410. Act 1889 p. 211 § 5, cited under § 3376.

3411. District number fifty-seven.

SEC. 247. That water district No. 57 shall consist of all lands irrigated by water taken from that portion of the Yampa river above water district No. 44 and below the mouth of Elk creek, and from the streams draining into the said portion of the Yampa river.

Legislation. Sec. 3411. Act 1889 p. 211 § 6, cited under § 3376.

3412. District number fifty-eight.

SEC. 248. That water district No. 58 shall consist of all lands irrigated by water taken from the Yampa river above water district No. 57, and from the streams draining into the said portion of Yampa river.

Legislation. Sec. 3412. Act 1889 p. 211 § 7, cited under § 3376.

3413. District number fifty-nine.

SEC. 249. That water district No. 59 shall consist of all lands irrigated by water taken from the Gunnison river above the mouth of Tomichi creek, and from all streams draining into the said portion of Gunnison river; also of all lands on the north side of Gunnison river below the mouth of Tomichi creek and above water district No. 40, and from the streams draining into the said portion of the Gunnison river.

Legislation. Sec. 3413. Act 1889 p. 214 § 22, cited under § 3376.

3414. District number sixty.

SEC. 250. That water district No. 60 shall consist of all lands irrigated by water taken from the San Miguel river and from the streams draining into the said river.

Legislation. Sec. 3414. Act 1889 p. 214 § 23, cited under § 3376.

3415. District number sixty-one.

SEC. 251. That water district No. 61 shall consist of all lands in the state of Colorado irrigated from that portion of Dolores river between the mouth of San Miguel river and the county

line of Dolores county, and from streams draining into the said portion of Dolores river.

Legislation. Sec. 3415. Act 1897 p. 175 § 2, amending Act 1889 p. 214 § 24, cited under § 3376.

3416. District number sixty-two.

SEC. 252. That water district No. 62 shall consist of all lands south of the Gunnison river irrigated by water taken from the Gunnison river below the mouth of Tomichi creek and above water district No. 40, and from the streams draining into the said portion of the Gunnison river.

Legislation. Sec. 3416. Act 1889 p. 214 § 25, cited under § 3376.

3417. District number sixty-three.

SEC. 253. That water district No. 63 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Dolores river below the mouth of the San Miguel river and from the streams draining into the said portion of the Dolores river.

Legislation. Sec. 3417. Act 1889 p. 214 § 26, cited under § 3376.

3418. District number sixty-four.

SEC. 254. That water district No. 64 shall consist of all lands irrigated by water taken from that portion of the South Platte river between the western boundary line of Washington county and the state line of Colorado and Nebraska, and from the streams draining into the said portion of the South Platte river.

Legislation. Sec. 3418. Act 1889 p. 213 § 14, cited under § 3376.

CITATIONS.

Upon the creation of this district out of district No. 1 the district court of the new district became vested with jurisdiction.—*Sterling Irr. Co. v. Downer*, 19 C. 597, 36 P. 788.

3419. District number sixty-five.

SEC. 255. That water district No. 65 shall consist of all lands in the state of Colorado irrigated by water taken from the middle

and north forks of the Republican river, from Sandy and Frenchman's creeks, and the tributaries of these streams.

Legislation. Sec. 3419. Act 1889 p. 213 § 15, cited under § 3376.

CITATIONS.

In an action to recover the pro rata share of the salary of the superintendent held that the evidence did not show that Phillips county was in this district.—*Chapman v. Phillips County*, 17 A. 237, 68 P. 134.

3420. District number sixty-six.

SEC. 256. That water district No. 66 shall consist of all lands in the state of Colorado irrigated by water taken from the Dry Cimarron and the streams draining into the said river.

Legislation. Sec. 3420. Act 1889 p. 472 § 2, cited under § 3403.

3421. District number sixty-seven.

SEC. 257. That water district No. 67 shall consist of all lands in the state of Colorado irrigated by water taken from that portion of the Arkansas river below the mouth of the Purgatoire river, and from the streams draining into the said portion of the Arkansas river.

Legislation. Sec. 3421. Act 1889 p. 472 § 3, cited under § 3403.

3422. District number sixty-eight.

SEC. 258. Water district No. 68 shall consist of all lands irrigated by water taken from that portion of the Uncompahgre river above water district No. 41, and from the streams draining into the said portion of the Uncompahgre river.

Legislation. Sec. 3422. Act 1889 p. 213 § 16, cited under § 3376.

3423. District number sixty-nine.

SEC. 259. That water district No. 69 shall consist of all lands lying in the state of Colorado irrigated from ditches or canals taking water from those portions of the Dolores river within Dolores county, and from streams draining into said portions of the Dolores river.

Legislation. Sec. 3423. Act 1897 p. 175 § 3, which established Water District No. 69.

3424. District number seventy.

SEC. 260. That water district No. 70 shall consist of all lands irrigated by water taken from Roan creek and all its tributaries situated within the counties of Garfield and Mesa, in this state, and also all lands in Mesa county situate north of Grand river and east of Roan creek.

Legislation. Sec. 3424. Act 1905 p. 243 § 2, cited under § 3336.

3425. Same—Expenses of commissioner.

SEC. 261. All charges of the water commissioner or his deputies, that may be appointed for said water district No. 70, shall be borne equally between the counties of Garfield and Mesa.

Legislation. Sec. 3425. Act 1905 p. 244 § 6, cited under § 3336.

3426. Jurisdiction of courts over districts.

SEC. 262. The district court of Garfield county shall retain and have jurisdiction over the adjudication of water rights and priorities in said water districts Nos. 39 and 70, and the district court of Mesa county shall retain and have jurisdiction of water rights and priorities in said water district No. 42.

Legislation. Sec. 3426. Act 1905 p. 244 § 5, cited under § 3336.

B. WATER COMMISSIONER.**Section.**

- 3427. Water commissioners—Appointment—Term of office—Bond.
- 3428. Vacancies, how filled—Removal.
- 3429. Take oath of office within ten days.
- 3430. Commissioner begin work when called on.
- 3431. Commissioner to devote entire time—Neglect.
- 3432. Duty of commissioner—Open and shut headgates.
- 3433. Powers of commissioner—Commissioner subordinate to state and division engineers.
- 3434. Pay of commissioner—Accounts—District in two counties.
- 3435. Deputy commissioner—Appointment—Salary.
- 3436. Commissioner may employ assistance—Salary.
- 3437. Accounts kept of assistants' time.
- 3438. Commissioner inspect ditches—Waste of water.
- 3439. Failure of commissioner to perform duty—Penalty.

3427. Water commissioners—Appointment—Term of office—Bond.

SEC. 263. There shall be one water commissioner for each of the above named districts, and for each district hereafter formed, who shall be appointed by the governor, to be selected by him from persons recommended to him by the several boards of county commissioners of the counties into which water districts may extend; and the water commissioner so appointed, shall, before entering upon his duties, give a good and sufficient bond for the faithful discharge of his duties, with not less than three sureties, in a sum not less than one thousand nor more than five thousand dollars, the amount of said bond to be fixed by the county commissioners, and approved by the governor and state engineer. The commissioner so appointed shall hold his office until his successor is appointed and qualified; *Provided, however, That if such water district shall be embraced in more than one county, and the several counties in which such water district is situated, disagree as to the amount of the bond as herein required of water commissioners, then and in that event the governor shall fix the amount thereof, with the same effect as though fixed by the county commissioners.*

Legislation. Sec. 3427. Act 1887 p. 302 § 1, amending Act 1879 p. 98 § 16. G. S. § 1752.

CITATIONS.

Presumption as to the regularity of the appointment of a water commissioner and liability of a county for its pro rata share of his compensation.—*Pueblo County v. Gould*, 9 A. 46, 39 P. 896.

3428. Vacancies, how filled—Removal.

SEC. 264. The governor shall, by like selection and appointment, fill all vacancies which may be occasioned by death, resignation or continued absence from the district, removal, or otherwise. Said county commissioners may, from time to time, recommend persons to be appointed as above provided, and the governor may, at any time, remove any water commissioner, in his discretion.

Legislation. Sec. 3428. Act 1887 p. 303 § 2. The text is supplemental to the preceding section.

3429. Oath of office within ten days.

SEC. 265. That within ten days after his appointment, and before entering upon the duties of his office, such water commissioner shall take and subscribe the oath of office prescribed by the constitution of this state.

Legislation. Sec. 3429. Act 1879 p. 99 § 17, cited under § 3175. G. S. § 1753.

3430. Commissioner begin work when called on.

SEC. 266. Said water commissioners shall not begin their work until they shall be called on by two or more owners or managers or persons controlling ditches in their several districts by application in writing stating that there is necessity for their action; and they shall not continue performing services after the necessity therefor shall cease.

[Penalty for failure of commissioner to act. Section 3258.]

Legislation. Sec. 3430. Act 1879 p. 107 § 42, cited under § 3175. G. S. § 1758.

3431. Commissioners to devote entire time—Neglect.

SEC. 267. It is hereby made the duty of the water commissioner after being called upon to distribute water, to devote his entire time to the discharge of his duties when such duties are required, so long as the necessities of irrigation in his district shall require; and it is made his duty to be actively employed on the line of the stream or streams in his water district, supervising and directing the putting in of head-gates, waste gates, keeping the stream clear of unnecessary dams or other obstructions, and such other duties as pertain to a guard of the public streams in his water district; and for wilful neglect of his duty, he shall be liable to fifty dollars fine, with costs of suit.

[Report of commissioners. Section 3348.]

Legislation. Sec. 3431. Act 1889 p. 471 § 6, entitled:

AN ACT

To Give Police Powers to Water Commissioners, Fix Their Salaries, Define Their Duties, and Provide for Their Assistants, and to Repeal Certain Parts of Acts Inconsistent Herewith.

Sec. 5 of the Act repealed § 41 of Act of 1879 p. 107 and § 1 of Act of 1885 p. 254.

CITATIONS.

This section cited in a condemnation proceeding holding that the petitioner had a right to have obstructions in a stream removed.—*Ortiz v. Hansen*, 35 C. 102, 83 P. 964.

3432. Duty of commissioners—Open and shut head-gates.

SEC. 268. It shall be the duty of said water commissioners to divide the water in the natural stream or streams of their district among the several ditches taking water from the same, according to the prior rights of each respectively; in whole or in part to shut and fasten, or cause to be shut and fastened, by order given to any sworn assistant, sheriff or constable of the county in which the head of such ditch is situated, the head-gates of any ditch or ditches heading in any of the natural streams of the district, which, in a time of a scarcity of water, shall not be entitled to water by reason of the priority of the rights of others below them on the same stream.

[When commissioner shall withdraw excess water from reservoir. Section 3208.]

Legislation. Sec. 3432. Act 1879 p. 99 § 18, cited under § 3175. G. S. § 1754.

CITATIONS.

This section cited in holding that in time of scarcity the commissioner is required to divide the water according to prior rights.—*Platte Valley I. Co. v. Buckers I. Co.*, 25 C. 84, 53 P. 331.

It is not the duty of a commissioner to make distribution of water between the users thereof from the same ditch. It is his duty to turn no more water into a ditch than is necessary.—*Cache La Poudre I. Co. v. Hawley*, 43 C. 32, 95 P. 317.

The duties of commissioners are no where restricted to ditches or canals whose priorities have been established.—*Chey v. Fremont County*, 18 A. 166, 70 P. 765.

3433. Powers of commissioner—Commissioner subordinate to state and division engineers.

SEC. 269. Water commissioners shall, in the discharge of their duties, be invested with the powers of constables, and may arrest any person violating his orders relative to the opening or shutting down of head gates, or the using of water for irrigation

purposes, and take such offender before the nearest justice of the peace, who may, if such offender be convicted, fine him in any sum not exceeding one hundred dollars, and, in default of the payment of such fine, may imprison him in the county jail not exceeding thirty days; *Provided*, That the orders of the superintendents of irrigation in their respective divisions, and the orders of the state engineer, shall be held at all times superior to the orders of water commissioners; and shall relieve any person acting in accordance with such superior orders from the penalties herein provided; *And, provided, also*, That in like manner the orders issued by the state engineer shall be held superior to any order issued by any superintendent of irrigation.

[Supervision of state engineer over commissioners. Section 3324.]

Legislation. Sec. 3433. Act 1889 p. 469 § 1. Title cited under § 3431.

CITATIONS.

Interference with a water commissioner in the discharge of his official duties does not constitute contempt of court.—*Roberson v. Peo.* 40 C. 124, 90 P. 81.

The duties of water commissioners are nowhere restricted to ditches or canals whose priorities have been established.—*Chew v. Fremont County*, 18 A. 166, 70 P. 765.

3434. Pay of commissioner—Accounts—District in two counties.

SEC. 270. The water commissioner shall be entitled to pay at the rate of five (5) dollars per day for each day he shall actually be employed in the duties of his office, and be paid by the county or counties in which his irrigating district may lie. Each water commissioner shall keep a just and itemized account of the time spent by him in the duties of his office, and shall present a true copy thereof, verified by oath, to the board of county commissioners of the county in which his district may lie, and said board of commissioners shall allow the same; and if said irrigation district shall extend into two or more counties, then such water commissioner shall present his account for his services, verified as aforesaid, to the board of county commissioners into which his district extends, and each board of county commissioners shall pay its pro rata share thereof.

[For payment of expenses of commissioner of district No. 70, see section 3426.]

Legislation. Sec. 3434. Act 1889 p. 470 § 2, amending Act 1885 p. 254 § 1, which amended Act 1879 p. 106 § 36, cited under § 3175. G. S. § 1756.

CITATIONS.

Neither the fact that the commissioner performs no services in a certain county nor that the county commissioners did not have any voice in his appointment will relieve the county from paying its pro rata share of his salary. *Clear Creek County v. McLean* (May, 1911), 115 P. 525.

Under this section each county in a water district is liable for an equal amount of the compensation of the water commissioner.—*Park County v. Locke*, 2 A. 510, 31 P. 351. *Pueblo County v. Gould*, 6 A. 46, 39 P. 896.

In an action by a superintendent for compensation a county was not liable where the evidence did not show that it was in the water district.—*Chapman v. Phillips County*, 17 A. 237, 68 P. 134.

3435. Deputy commissioner—Appointment—Salary.

SEC. 271. The water commissioner is hereby authorized to appoint not to exceed two deputies to speedily make the examinations provided for in section 1 of this act, who shall be entitled to the same compensation, and to be paid in the same manner as is by law provided for the payment of other deputy water commissioners.

[Section 1 above referred to is section 3438.]

Legislation. Sec. 3435. Act 1895 p. 197 § 2, entitled:

AN ACT

To Provide for the Regulation of the Use of the Waters of This State.

3436. Commissioner may employ assistance—Salary.

SEC. 272. The water commissioner is hereby given power, whenever he shall deem it necessary, to employ a suitable assistant, or assistants, to aid him in the discharge of his duties; such assistant, or assistants, shall take the same oath as water commissioner, and shall obey his instructions, and shall be entitled to pay at the rate of two dollars and fifty cents (\$2.50) per day for every day they are so employed, to be paid by county commissioners upon the certificates of the water commissioners.

Legislation. Sec. 3436. Act 1889 p. 470 § 3, amending by implication Act 1879 p. 107 § 41, cited under § 3175. G. S. § 1757.

3437. Accounts kept of assistant's time.

SEC. 273. Each water commissioner shall keep an itemized account of the time of each assistant by him employed, and shall certify the same to the board of county commissioners, who shall pay such assistant, or assistants, in the same manner as provided for payment of water commissioners in section two of this act.
[Section 2 referred to is section 3434.]

Legislation. Sec. 3437. Act 1889 p. 470 § 4, cited under § 3431.

CITATIONS.

The initials "O. K." upon the account of the water commissioner's deputy followed by his signature and official title is a sufficient certification.—*Gunnison County v. Hider*, 47 C. 445, 107 P. 1069.

3438. Commissioner inspect ditches—Waste of water.

SEC. 274. The water commissioners of the several water districts of this state are hereby empowered, and it is hereby made their duty, upon the application of the owners of one or more ditches in their district, to immediately make, or cause to be made, a thorough examination of all ditches within their district for the purpose of ascertaining what use is being made by the owners of or consumers of water from said ditches; and if at any time he shall ascertain that the owner or owners of any ditch drawing water from the natural streams furnishing water to his district shall be permitting any of the waters flowing in such ditch to go to waste, or to be wastefully, or extravagantly or wrongfully, used by its water consumers, or put to any other use than that to which it is entitled to be used in the order of priority, at such times as the same is being needed by other appropriators, it shall be the duty of such water commissioners to immediately shut off the supply of water in such ditch to such an extent as in his judgment was wasted, or extravagantly, wastefully or wrongfully used.

Legislation. Sec. 3438. Act 1895 p. 197 § 1, cited under § 3435.

3439. Failure of commissioner to perform duties—Penalty.

SEC. 275. Any water commissioner who fails to perform any of the duties imposed upon him by this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof by a court of competent jurisdiction, shall be fined in a sum not less than fifty (50) dollars nor more than five hundred (500) dollars.

[For bribery of water commissioner see section 1723.]

Legislation: Sec. 3439. Act 1895 § 3, cited under § 3435.

VIII. IRRIGATION DISTRICTS.**Section.**

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VIII. IRRIGATION DISTRICTS.

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Section.

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3440. Irrigation district.

SEC. 276. Whenever a majority of the resident freeholders owning lands in any district desire to provide for the irrigation of the same they may propose the organization of an irrigation district under the provisions of this act, and when so organized each district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district; *Provided*, That where ditches, canals or reservoirs have been constructed before

the passage of this act, such ditches, canals, reservoirs and franchises, and the lands watered thereby, shall be exempt from the operation of this law, except such district shall be formed to purchase, acquire, lease or rent such ditches, canals, reservoirs and their franchises.

Legislation. Sec. 3440. Act 1905 p. 246 § 1, entitled:

AN ACT

In Relation to Irrigation Districts.

CITATIONS.

The irrigation district act of 1901 p. 198 held constitutional.—*Anderson v. Grand Val. I. Dist.*, 35 C. 531-539, 85 P. 315.

3441. Petition.

SEC. 277. For the purpose of the establishment of an irrigation district as provided by this act, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district; said petition shall state that it is the purpose of petitioners to organize an irrigation district, under the provisions of this act; said petition shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district and shall select a committee of three of said petitioners to present such petition to the board of county commissioners as provided by law, praying that the said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors resident within said proposed district; said petition shall be signed by a majority of the resident freeholders within said proposed district, and who shall also be the owners in the aggregate of a majority of the whole number of acres belonging to the resident freeholders within the said proposed district. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said board of county commissioners in double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceedings

in case said organization shall not be effected, but in case such district is so effected, then said expenses incurred by the board of county commissioners shall be paid back to said county by said district. Such petition shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice signed by the committee of said petitioners selected by the petition for that purpose giving the time and place of the presentation of the same to said board of county commissioners.

Legislation. Sec. 3441. Act 1905 § 2, cited under § 3440.

CITATIONS.

A petition under this section of the act of 1901 held insufficient because improperly signed and directed.—*Ahern v. High Line I. Dist.*, 39 C. 414, 416, 89 P. 964.

The act of 1901 not having declared the character of proof by which any fact may be established it must be established in accordance with the common law rule of evidence.—*Id.* 419.

3442. Presentation and allowance of petition.

Sec. 278. When such petition is presented and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such application for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this act; they may adjourn such examination from time to time not exceeding three weeks in all and shall by final order duly entered define and establish the boundaries of such proposed district; *Provided*, That said board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of water works applicable to other lands in such proposed district; nor shall any land which will not in the judg-

ment of the board be benefited by such proposed system be included in such district if the owner thereof shall make application at such hearing to withdraw the same, *Provided, also*, That contiguous lands not included in said proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing.

When the boundaries of any proposed district shall have been examined and defined as aforesaid the county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the conditions of this act, and by such order shall submit the names of one or more persons from each of the three divisions of said district as hereinafter provided to be voted for as directors therein, and for the purposes of said election shall divide said district into three divisions as nearly equal in size as may be practicable and shall provide that a qualified elector of each of said three divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. Each of said divisions shall constitute an election precinct and three judges shall be appointed for each of such precincts, one of whom shall act as clerk of said election; *Provided*, That in the hearing of any such petition the board of county commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reasons on account of the provisions of this act not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records and in case these reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this act, which writ shall be heard within twenty days from the date of its issuance, and which twenty days shall be excluded from the forty days given the commissioners herein to act upon said

petition. The officers of such district shall consist of three directors, a secretary and treasurer.

Legislation. Sec. 3442. Act 1905 § 3, cited under § 3440.

CITATIONS.

Section 2 of the act of 1901 considered as to an abuse of power by the county commissioners in modifying boundaries.—*Ahern v. High Line I. Dist.*, 39 C. 423, 89 P. 964.

3443. Notice—Election.

SEC. 279. The board of county commissioners shall thereupon cause a notice embodying said orders in substance signed by the chairman of the board of county commissioners and the clerk of said board to be issued, given and published, giving public notice of said election, the time and places thereof, the matters submitted to the vote of the electors; said notice and order shall be published once a week for at least three weeks prior to such election in a newspaper of general circulation in said county, and if any portion of such proposed district lies within any other county or counties then such order and notice shall be published in a newspaper of general circulation published within each of said counties.

At all elections held under the provisions of this act all persons shall be entitled to vote, who are resident freeholders of agricultural lands within said district, or who are the owners of lands to the extent of forty acres or more within said district and reside within any county into which any part of said district shall extend, and who are qualified electors under the general laws of the state therein and who shall have paid property taxes upon property located within said district during the year preceding any such election. Electors not residing within the district shall be entitled to vote only within the division of such district wherein their lands or a major portion thereof are located; and any person entitled to vote as aforesaid, shall also be eligible to election as a director in and for the division in such district, in which the major portion of his lands are located. The ballots to be used and cast at such election for the formation of such district shall be substantially as follows: "Irrigation District—Yes," or "Irrigation

District—No,” or words equivalent thereto, and shall also contain the names of the persons to be voted for as members of the board of directors of said district; each elector may vote for three directors, one from each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted or name voted upon and opposite thereto at any election held under this act.

Legislation. Sec. 3443. Act 1907 p. 488 § 1, amending Act 1905 p. 249 § 4, cited under § 3440.

3444. Same—Canvass of votes—Proclamation.

SEC. 280. The said board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat; and if, upon such canvass, it appears that at least a majority of said legal electors in said district have voted “Irrigation District—Yes,” the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. For the purpose of the election above provided for, the said board of county commissioners must establish a convenient number of election precincts and polling places in said proposed district, and define the boundaries thereof, which said precincts may

thereafter be changed by the board of directors of such districts, and shall also appoint the judges of election for each such precinct, one of whom shall act as clerk of election.

Legislation: Sec. 3444. Act 1905 p. 249 § 5, cited under § 3440.

2445. Officers—Election—Bond.

SEC. 281. The regular election of said district, for the purpose of electing a board of directors shall be held on the first Tuesday after the first Monday in December of each year, at which time one director shall be elected for a term of three years. *Provided*, That at the first election held to choose the first board of directors, after the organization of any district shall have been effected, the person having the highest number of votes shall continue in office for the full term of three years; the next highest two years; and the next highest one year. But if two or more persons have the same number of votes, then their term shall be determined by lot, under the direction of the county judge of the county wherein the organization of said district shall have been effected. The person receiving the highest number of votes for any office to be filled at such election is elected thereto. Within ten days after receiving their certificates of election herein-after provided for said officers shall take and subscribe the official oath and file the same in the office of the county clerk wherein the organization was effected, and on the first day of January following, shall assume the duties of their respective offices. Each member of the board of directors shall execute an official bond in the sum of three thousand (3,000) dollars which bond shall be approved by the county judge of the county wherein such organization was effected, and shall be recorded in the office of the county clerk thereof. All official bonds herein provided shall be in form prescribed by law for official bonds for county officials, except that the obligee named in said bonds shall be to the district, and shall be filed with the county clerk at the same time as the filing of the oath herein provided. *Provided, further*, That in all irrigation districts heretofore organized and now exercising the powers granted by law, the term of office of two of the members of their boards of directors is hereby extended for a period of one and two years respectively, and it shall be the duty of said board

of directors at their regular meeting held in October, 1907, to determine by lot, under the direction of the county judge of the county wherein such organization was effected, which of said directors shall serve the additional one or two years respectively.

[See Chapter 99, Official Bonds. See also section 1353.]

Legislation. Sec. 3445. Act 1907 p. 489 § 2, amending Act 1905 p. 25 § 6, cited under § 3440.

3446. Same—Election notice.

SEC. 282. The office of the board of directors shall be located in the county where the organization was affected. Fifteen days before any election held under this act, subsequent to the organization of the district, the secretary who shall be appointed by the board of directors shall cause notice specifying the polling places of each precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, the board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held.

Legislation. Sec. 3446. Act 1905 p. 251 § 7, cited under § 3440.

3447. Same—Election officers' duties.

SEC. 283. One of the judges shall be chairman of the election board and may: *First*—Administer all oaths required in the progress of an election. *Second*—Appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof,

may administer and certify oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock in the morning of election and be kept open until six o'clock p. m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the returns duly certified to the board of directors of the district.

Legislation. Sec. 3447. Act 1905 § 8, cited under § 3440.

3448. Same—Canvass of votes.

SEC. 284. No lists, tally paper, or certificates returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes of the district for each person voted for, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office, and also declare the result of any question submitted.

Legislation. Sec. 3448. Act 1905 § 9, cited under § 3440.

3449. Same—Records—Vacancy and term of office.

SEC. 285. The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such results, which statement must show: *First*—A copy of the publication notice of said election. *Second*—

The names of the judges of said election. *Third*—The whole number of votes cast in the district and in each precinct of the district. *Fourth*—The names of the persons voted for. *Fifth*—The office to fill which each person was voted for. *Sixth*—The number of votes given in each precinct for each of such persons. *Seventh*—The number of votes given in the district for each of such persons. *Eighth*—The names of the persons declared elected. *Ninth*—The result declared on any question submitted in accordance with the majority of the votes cast for or against such question. The board of directors must declare elected the person having the highest number of votes given for each office, and also the result of any question submitted. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors, by death, removal, or inability from any cause, to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the board of county commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

Legislation. Sec. 3449. Act 1905 § 10, cited under § 3440.

3450. Board of directors—Officers—General duties—Ratio of water distribution.

SEC. 286. The directors, having duly qualified, shall organize as a board, elect a president from their number, and appoint a secretary. The board shall have power, and it shall be their duty, to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employes as may be required, and prescribe their duties, establish equitable rules and regulations for the distribution and use of water among the owners of said

land, and generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. Said board shall have the power in addition to the means to supply water to said district proposed by the petition submitted for the formation of said district, to construct, acquire, purchase, or condemn any and all canals, ditches, reservoirs, reservoir sites, water, water rights, rights of way, or other property necessary for the use of the district, or to acquire by condemnation, or otherwise, the right to enlarge any ditch, canal or reservoir already constructed or partly constructed. In case of the purchase of any property by said district, when it shall be proposed by the board of directors to purchase a system of irrigation already constructed or partially constructed, and to enlarge and complete the same adequate to the needs of the district, the board may in such case embody in one contract the matter of the purchase, the enlargement, and the completion of such irrigation system without inviting bids for such construction and completion; and in case of the purchase of such property as aforesaid by said district, the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale. But no contract involving a consideration exceeding ten thousand dollars, and not exceeding twenty-five thousand dollars, shall be binding, unless such contract shall be authorized and ratified in writing by not less than one-third of the legal electors of said district according to the number of votes cast at the last district election; nor shall any contract in excess of twenty-five thousand dollars be binding until such contract shall have been authorized and ratified at an election, in manner as is provided for the issue of bonds.

The said rules and regulations shall be printed in convenient form as soon as the same are adopted, for distribution in the district. All waters distributed shall be apportioned to each land owner pro rata to the lands assessed under this act within such district. The board of directors shall have power to lease or rent the use of water or contract for the delivery thereof to occupants of other lands within or without the said district at such prices and on such terms as they deem best, provided the rental shall not be less than one and one-half times the amount of the district tax

for which said land would be liable if held as a freehold; *And provided further*, No vested or prescriptive right to the use of such water shall attach to said land by virtue of such lease or such rental, *Provided*, That any land owner in said district may with the consent of the board of directors assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any other bona fide land owner, to be used in said district for use on his land for said year, provided such owners shall have paid all amounts due on assessments upon all such lands.

The board of directors shall further have power to lease or rent the use of water or to contract for the delivery thereof to settlers upon or occupants of the public domain on the terms hereabove provided; *Provided*, That in such case the board of directors shall have the further power to make a contract on behalf of the district with such settler or occupant to the effect that such settler or occupant shall, upon receiving full title to his lands and upon the payment of his proportionate share of the bond assessments as provided in section 35, include his lands within said district, and shall upon such inclusion be entitled to all the rights and privileges of a member of said district. Before the execution of such contract the board of directors shall cause notice of such contract to be given substantially as provided in section 33 of this act, with such changes in the form of the notice as may be necessary, and a hearing upon said contract and all objections thereto shall be had as provided in section 34 of this act. If upon said hearing the board of directors deem it not for the best interests of the district to execute said contract, they shall by order refuse to execute said contract; but if they deem it for the best interests of the district that said contract be executed, the board may execute said contract, and in such case said contract shall be valid and binding upon all parties thereto, and when the said settler or occupant shall have complied with said contract and obtained title to his lands, the board shall, upon proof of such compliance and obtaining of title, and without any further notice or hearing upon the matter, enter an order of inclusion of said lands as provided in section 36 of this act; *Provided*, If within thirty days from the execution of said contract, a majority of the qualified

electors of the district protest in writing to said board against the execution of said contract, said contract shall be held for naught, and shall not be binding upon any party thereto.

13. **Legislation.** Sec. 3450. Sec. 1 of Act of 1909 p. 422 approved April 13. Substitute for § 3450 which was Act of 1905 p. 253 § 11.

Sec. 3 of the 1909 Act was a General Repeal and Sec. 4 was the Emergency Clause.

3451. Directors—Meetings—Duties—Domain—Public use.

SEC. 287. The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October, and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board, or any two directors. All meetings of the board must be public, and two members shall constitute a quorum for the transaction of business; and on all questions requiring a vote there shall be a concurrence of at least two members of said board. All records of the board must be open to the inspection of any elector during business hours. The board, its agents, and employes, shall have the right to enter upon any land in the district, to make surveys and to locate and construct any canal or canals, and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair, and improvement of its canals, ditches, reservoirs and water works; and shall also have the right by purchase or condemnation to acquire rights of way for the construction or enlargement of any of its ditches, canals or reservoirs, also lands for reservoir sites.

Legislation. Sec. 3451. Act 1905 p. 253 § 12, cited under § 3440.

3452. Property—Title.

SEC. 288. The title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart for the uses and purposes set forth in this act, and shall be exempt from all taxation, and said board is hereby authorized

and empowered to hold, use and acquire, manage, occupy and possess said property as herein provided; *Provided*, That when any district contemplated in this act shall find it necessary to procure and acquire a supply of water from outside the boundaries of this state, then and in such event it shall be lawful for said district to contract and pay for the same in the same manner as other property acquired by the district is purchased and paid for.

Legislation. Sec. 3452. Act 1905 § 13, cited under § 3440.

3453. Conveyances—Suits.

SEC. 289. The said board is hereby authorized and empowered to take conveyances or assurances for all property acquired by it under the provisions of this act in the name of such irrigation district to and for the purposes herein expressed and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act or to enforce, maintain, protect, or preserve any or all rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state, now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in section 3 of this act: and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth: and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and such certified copy thereof, so filed for record, and which has exercised or shall exercise the rights and powers of such a district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organiza-

tion whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act; and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

[Section 3 above referred to is section 3442.]

Legislation. Sec. 3453. Act 1905 § 14, cited under § 3440.

3454. Bond—Elections.

SEC. 290. For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water rights, canals, ditches and works, and acquiring the necessary property and rights therefor, for the purpose of paying the first year's interest upon the bonds herein authorized, and otherwise carrying out the provisions of this act, the board of directors of any such district shall, as soon after such district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised for such purposes, and shall forthwith call a special election, at which election shall be submitted to the electors of such district possessing the qualifications prescribed by this act the question of whether or not the bonds of said district shall be issued in the amount so determined. A notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice shall specify the time of holding the election, the amount of bonds proposed to be issued, and said election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act governing the election of officers; *Provided*, That no informalities in conducting such election shall invalidate the same

if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds—No" or words equivalent thereto. If a majority of the legal electors who are freeholders and taxpayers within said district have voted "Bonds—Yes" the board of directors shall immediately cause bonds in such amount to be issued and payable in series as follows, to-wit:

At the expiration of eleven years, not less than five per cent. of the whole amount and number of said bonds; at the expiration of twelve years, not less than six per cent. of the whole amount and number of said bonds; at the expiration of thirteen years, not less than seven per cent. of the whole amount and number of said bonds; at the expiration of fourteen years, not less than eight per cent. of the whole amount and number of said bonds; at the expiration of fifteen years not less than nine per cent. of the whole number of said bonds; at the expiration of sixteen years, not less than ten per cent. of the whole amount and number of said bonds; at the expiration of seventeen years, not less than eleven per cent. of the whole amount and number of said bonds; at the expiration of eighteen years, not less than thirteen per cent. of the whole amount and number of said bonds; at the expiration of nineteen years, not less than fifteen per cent. of the whole amount and number of said bonds; at the expiration of twenty years, a percentage sufficient to pay off the remainder of said bonds; that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount, and not for a percentage; that said bonds shall bear interest at the rate of not to exceed six per cent. per annum payable semi-annually on the first day of June and December of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid, and at such other place as the board of directors may designate in such bond. Said bonds shall be each of the denomination of one hundred dollars, nor more than five hundred dollars, shall be negotiable in form, executed in the name of the district and signed by the president and secretary, and the seal of the district shall be affixed thereto. Said bonds shall be numbered con-

secutively as issued, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. Said bonds shall express on their face that they are issued by the authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser. *Provided*, Any such district may, by a majority vote of the legal electors of said district, provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof, in series as above provided; *Provided, further*, That when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor, and it becomes necessary to raise additional money for such purposes, additional bonds may be issued submitting the question at special election to the qualified voters of said district, otherwise complying with the provisions of this section in respect to an original issue of such bonds; *Provided, also*, The lien for taxes, for the payment of the interest and principal of any bond issue, shall be a prior lien to that of any subsequent bond issue.

Legislation. Sec. 3454. Act 1905 § 15, cited under § 3440.

3455. Bonds—Sale—Proceeds.

SEC. 291. The board may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, and otherwise to fully carry out the object and purposes of this act. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Denver, and in any other newspaper, at their discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the

time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five per cent. of the face value thereof. In case no bid is made and accepted as above provided the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, or for the construction of any canal, reservoir and works; *Provided*, Such bonds shall not be so disposed of at less than ninety-five per cent. of the face value thereof.

[State may purchase ten per cent. of the bond issue. Section 5198.]

Legislation. Sec. 3455. Act 1905 § 16, cited under § 3440.

3456. Bonds—Payment—Lien.

SEC. 292. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be and remain liable to be assessed for such payments as herein provided.

Legislation. Sec. 3456. Act 1905 § 17, cited under § 3440.

3457. Board of directors—Levy.

SEC. 293. It shall be the duty of the board of directors, on or before September first of each year, to determine the amount of money required to meet the maintenance, operating and current expenses for the ensuing year, and to certify to the county commissioners of the county in which the office of said district is located, said amount, together with such additional amount as may be necessary to meet any deficiency in the payment of said expenses theretofore incurred.

Legislation. Sec. 3457. Act 1905 § 18, cited under § 3440.

3458. Assessor—Assessment.

SEC. 294. It shall be the duty of the county assessor of any county embracing the whole or a part of any irrigation district, to assess and enter upon his records as assessor in its appropriate column, the assessment of all real estate, exclusive of improve-

ments, situate, lying and being within any irrigation district in whole or in part of such county. Immediately after said assessment shall have been extended as provided by law, the assessor shall make returns of the total amount of such assessment to the county commissioners of the county in which the office of said district is located. All lands within the district for the purposes of taxation under this act shall be valued by the assessor at the same rate per acre; *Provided*, That in no case shall any land be taxed for irrigation purposes under this act, which from any natural cause cannot be irrigated, or is incapable of cultivation.

Legislation. Sec. 3458. Act 1905 § 19, cited under § 3440.

3459. County commissioners.

Sec. 295. It shall be the duty of the county commissioners of the county in which is located the office of any irrigation district, immediately upon receipt of the returns of the total assessment of said district, and upon the receipt of the certificate of the board of directors certifying the total amount of money required to be raised as herein provided, to fix the rate of levy necessary to provide said amount of money, and to fix the rate necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; also, to fix the rate necessary to provide the amount of money required for any other purposes as in this act provided, and which are to be raised by the levy of assessments upon the real property of said district; and to certify said respective rates to the county commissioners of each county embracing any portion of said district. The rate of levy necessary to raise the required amount of money on the assessed valuation of the property of said district shall be increased fifteen per cent. to cover delinquencies. For the purposes of said district it shall be the duty of the county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy, at the rates above specified, upon all real estate in said district within their respective counties. All taxes levied under this act are special taxes.

Legislation. Sec. 3459. Act 1905 § 20, cited under § 3440.

3460. District treasurer.

SEC. 296. The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond and to indictment and criminal prosecution for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall collect, receive and receipt for all moneys belonging to said district. It shall be the duty of the county treasurer of each county in which any irrigation district is located in whole or in part, to collect and receipt for all taxes levied as herein provided in the same manner and at the same time, and on the same receipt as is required in the collection of taxes upon real estate for county purposes; *Provided, however.* That such county treasurer shall receive in payment of the general fund tax above mentioned for the year in which said taxes were levied, warrants drawn against said general fund the same as so much lawful money of the United States, if such warrant does not exceed the amount of the general fund tax which the person tendering the same owns; *Provided, further.* That such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied. interest coupons or bonds of said irrigation district maturing within the year the same as so much lawful money of the United States, if such interest coupons or bonds do not exceed the amount of district bonds funds tax which the person tendering the same owns. The county treasurer of each county comprising a portion only of the irrigation district, excepting the county treasurer of the county in which the office of said district is located, shall on the first Mondays of every month remit to the district treasurer aforesaid all moneys, warrants, coupons, or bonds theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund account shall consist of all moneys received on account of interest and principal of bonds issued by said district, said accounts for interest and principal shall be kept separate. The general fund shall consist of all other moneys or

general fund warrants received by the collection of taxes or otherwise. The district treasurer aforesaid shall pay out of said bond fund, when due, the interest and principal of the bonds of said district, at the time and place specified in said bonds, and shall pay out of said general fund only upon the order of the district, signed by the president and countersigned by the secretary of said district as herein provided. The district treasurer, on the fifteenth day of each month, shall report to the secretary of the district the amount of money in his hands to the credit of the respective funds above provided; the amount of warrants paid during the previous month, and the amount of registered warrants if there be any. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity, and they shall be responsible for the safe-keeping, disbursement and payment thereof the same as for other moneys collected by them as such treasurers; *Provided*, Said county treasurer shall receive as his sole compensation for the collection of such taxes, such amount as the board of directors may allow, to be not less than twenty-five (25) dollars, nor more than one hundred (100) dollars, which compensation shall be considered as a part of the regular salary of such county treasurer as provided by law.

[For treasurer using public money or dealing in warrants see sections 1820-1826.]

Legislation. Sec. 3460. Act 1907 p. 490 § 3, amending Act 1905 p. 260 § 21, cited under § 3440.

CITATIONS.

This section of the act of 1901 cited in a proceeding under that act.—*Anderson v. Grand Val. I. Dist.*, 35 C. 528, 85 P. 315.

3461. Assessment—Collection.

SEC. 297. The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeiture for delinquent taxes.

Legislation. Sec. 3461. Act 1905 p. 262 § 22, cited under § 3440.

CITATIONS.

This section of the act of 1901 referred to in a proceeding under that act.—*Anderson v. Grand Val. I. Dist.*, 35 C. 525 85 P. 315.

3462. Construction—Contracts.

SEC. 298. After adopting a plan for the construction of canals, reservoirs, and works, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof: if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions, or as a whole, to the lowest responsible bidder, or they may reject any or all bids and readvertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten per cent. of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge, and be approved by the board.

Legislation. Sec. 3462. Act 1905 § 23, cited under § 3440.

3463. Claim—Audit—Payment—Financial report.

SEC. 299. No claims shall be paid by the district treasurer until the same shall have been allowed by the board; and only

upon warrants signed by the president, and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purposes; and if the district treasurer has not sufficient money on hand to pay such warrant when it is presented for payment, he shall endorse thereon "Not paid for want of funds, this warrant draws interest from date at six per cent. per annum," and endorse thereon the date when so presented, over his signature, and from the time of such presentation until paid such warrant shall draw interest at the rate of six per cent. per annum; *Provided*, When there is more than the sum of one hundred dollars or more in the hands of the treasurer it shall be applied upon said warrant. All claims against the district shall be verified the same as required in the case of claims filed against counties in this state, and the secretary of the district is hereby authorized and empowered to administer oaths to the parties verifying said claims, the same as the county clerk or notary public might do. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

Legislation. Sec. 3463. Act 1905 § 24, cited under § 3440.

3464. Expenses of organization, how defrayed.

SEC. 300. For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of all canals, ditches, reservoirs and works, including salaries of officers and employes, the board may either fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation, or other purposes, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessment; *Provided*, That in case the money raised by the sale of bonds

issued be insufficient, and in case bonds be unavailable for the completion of the plans of works adopted, it shall be the duty of the board of directors to provide for the completion of said plans by levy of an assessment therefor in the same manner in which levy of assessments is made for the other purposes provided for in this act.

Legislation. Sec. 3464. Act 1905 § 25, cited under § 3440.

3465. Crossing streams, highways, railroads, state lands, etc.

SEC. 301. The board of directors shall have the power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land for public uses. The right of way is hereby given, dedicated, and set apart, to locate, construct and maintain said works or reservoirs, over, through, or upon any of the lands which are now, or may be the property of the state.

Legislation. Sec. 3465. Act 1905 § 26, cited under § 3440.

3466. Officers' salaries—Not interested in contracts.

SEC. 302. The board of directors shall each receive at the rate of two and one-half dollars per day while attending meetings, and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed eight hundred dollars per annum. No director or any officer named in this act shall, in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom: nor shall receive any bonds, gratuity, or bribe, and for any violation of this provision, such officer shall be deemed guilty of a felony, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment

n the penitentiary not exceeding five years nor less than one year.

Legislation. Sec. 3466. Act 1905 § 27, cited under § 3440.

3467. Limit of indebtedness.

SEC. 303. The board of directors, or other officers of the district, shall have no power to incur any debt or liability, either by issuing bonds or otherwise, in excess of the express provisions of this act, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

Legislation. Sec. 3467. Act 1905 § 28, cited under § 3440.

3468. Insufficient supply—Distribution.

SEC. 304. In case the volume of water in any canal, reservoir or other works in any district shall not be sufficient to supply the continual wants of the entire district and susceptible of irrigation therefrom, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities, as they may in their judgment think best for the interests of all parties concerned.

Legislation. Sec. 3468. Act 1905 § 29, cited under § 3440.

3469. Compensation for property taken.

SEC. 305. Nothing herein contained shall be deemed to authorize any person or persons, to divert the waters of any river, creek, stream, canal, or reservoir to the detriment of any person or persons having a prior right to the waters of such river, creek, stream, canal, or reservoirs, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use.

Legislation. Sec. 3469. Act 1905 § 30, cited under § 3440.

3470. Boundaries—Change of—Effect.

SEC. 306. The boundaries of any irrigation district now or hereafter organized under the provisions of this act, may be changed in the manner herein prescribed; but such change of the

boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for, or upon which it was or might become liable or chargeable had such change of its boundaries not been made.

Legislation. Sec. 3470. Act 1905 § 31, cited under § 3440.

3471. Contiguous territory—Annexation—Petition.

SEC. 307. The holder or holders of title, or evidence of title, of any land adjacent to or situated within the boundaries of any irrigation district or irrigable from the ditches, canals and irrigation works of the district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Legislation. Sec. 3471. Sec. 1 of Act of 1911, S. B. No. 281 approved May 29. Substitute for § 3471 which was Act of 1905 p. 265 § 32.

Sec. 2 was the usual repealing section and Sec. 3 was the Emergency Clause.

3472. Contiguous territory—Notice.

SEC. 308. The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once each week for three successive weeks, in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted. The time specified

in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner, or petitioners, shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

Legislation. Sec. 3472. Act 1905 § 33, cited under § 3440.

3473. Contiguous territory—Hearing.

SEC. 309. The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of said petition may adjourn, shall proceed to hear the petition, and all objections thereto, presented in writing by any person, showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

Legislation. Sec. 3473. Act 1905 § 34, cited under § 3440.

3474. Payment.

SEC. 310. The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay to such district as assessments for the payment of its pro rata share of all bonds and the interest thereon, which may have previously thereto been issued by said district had such lands been included in such district at the time the same was originally formed or when said bonds were so issued.

Legislation. Sec. 3474. Act 1905 § 35, cited under § 3440.

3475. Boundaries—Orders.

SEC. 311. The board of directors if they deem it not for the

best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included, the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary. *Provided*, If within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and such lands shall not be included therein. *Provided*, That in the case of inclusion of government land according to the provisions of section 11, said protest must be made within thirty days of the date of the execution of the contract therein provided for.

Legislation. Sec. 3475. Sec. 2 of Act of 1909, cited under § 3450. Substitute for § 3475 which was Act of 1905 p. 266 § 36.

3476. Order—Record—Effect.

SEC. 312. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district, showing such change, if any, certified by the president and secretary, shall be filed for record in the office of the clerk and recorder of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Legislation. Sec. 3476. Act 1905 p. 267 § 37, cited under § 3440.

3477. Records—Evidence.

SEC. 313. Upon the filing of the copies of the order and the plat, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Legislation. Sec. 3477. Act 1905 § 38, cited under § 3440.

3478. Legal representatives petitioners.

SEC. 314. A guardian, executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed.

Legislation. Sec. 3478. Act 1905 § 39, cited under § 3440.

3479. Redivision of district—Election of officers.

SEC. 315. In case of the inclusion of any land within any district by proceedings under this act the board of directors shall, at least thirty days prior to the next succeeding general election, make an order redividing such district into three divisions, as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall thereafter be elected by each division. For the purposes of election the board of directors shall establish a convenient number of election precincts in said districts, and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary.

Legislation. Sec. 3479. Act 1905 § 40, cited under § 3440.

3480. Exclusion of lands.

SEC. 316. Any tract of land included within the boundaries

of any such district, at or after its organization, under the provisions of this act, may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which it would or might become liable or chargeable, had such land not been excluded from the district.

Legislation. Sec. 3480. Act 1905 § 41, cited under § 3440.

3481. Petition for exclusion.

SEC. 317. The owner or owners in fee of any lands constituting a portion of any irrigation district may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall describe the lands which the petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

[For form of acknowledgment see section 691.]

Legislation. Sec. 3481. Act 1905 § 42, cited under § 3440.

3482. Same—Notice.

SEC. 318. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspapers be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the

names of the petitioners, description of the lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall give such notice.

Legislation. Sec. 3482. Act 1905 § 43, cited under § 3440.

3483. Same—Hearing.

SEC. 319. The board of directors at the same time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any persons, showing cause as aforesaid why the prayer of said petitioner should not be granted. The filing of such petition with such board as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

Legislation. Sec. 3483. Act 1905 § 44, cited under § 3440.

3484. Same—Orders.

SEC. 320. The board of directors, if they deem it not for the best interest of the district that the lands mentioned, in the petition or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if they deem it for the best interest of the district that the lands mentioned, in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition, or some defined portion thereof, to be excluded from the district. *Provided*, If within thirty days from the making of such order a

majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom.

Legislation. Sec. 3484. Act 1905 § 45, cited under § 3440.

3485. Order—Record—Effect.

SEC. 321. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the clerk and recorder of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to every intent and purpose as if the lands which are excluded by the change of the boundaries as aforesaid, had not been excluded therefrom.

Legislation. Sec. 3485. Act 1905 § 46, cited under § 3440.

3486. Division of districts.

SEC. 322. At least thirty days before the next general election of such district the board of directors thereof may make an order dividing said district into three divisions, as nearly equal in size as practicable, which shall be numbered first, second and third, and one director shall be elected for each division by the qualified electors of the whole district. For the purpose of election in such district the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Legislation. Sec. 3486. Act 1905 § 47, cited under § 3440.

3487. Dissolution of district—Election.

SEC. 323. Whenever a majority of the resident freeholders, representing a majority of the number of acres of the irrigable

land, in any irrigation district organized, or hereafter to be organized, under this act, shall petition the board of directors to call a special election, for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the dissolution of said irrigation district, setting forth in said petition, that all bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all claims and bills have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties or county in which said district is located, for a period of thirty (30) days prior to said election, setting forth the time and place for holding said election in each of the three voting precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For dissolution—Yes" and "For dissolution—No."

Legislation. Sec. 3487. Act 1905 § 48, cited under § 3440.

3488. Same—Canvass—Record.

SEC. 324. The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of said ballots contain the words, "For Dissolution—Yes," then it shall be the duty of said board of directors to declare said district to be disorganized, and shall certify to the county clerk of the respective counties, in which the district is situated, stating the number of signers to said petition. The said election was called

and set for the..... day of....., month of

..... year. That said election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against said proposition, said certificate to bear the seal of the district, and the signatures of the president and secretary of said board of directors. And it shall be the duty of the said respective clerks to record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at

said election were "For Dissolution—No," then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of said irrigation district.

Legislation. Sec. 3488. Act 1905 § 49, cited under § 3440.

3489. Judicial examination and confirmation.

SEC. 325. The board of directors of an irrigation district organized under the provisions of this act may commence special proceedings, in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold, or disposed of may be judicially examined, approved and confirmed.

Legislation. Sec. 3489. Act 1905 § 50, cited under § 3440.

CITATIONS.

This section of the act of 1901 cited in a proceeding under that act.—*Anderson v. Grand Val. I. Dist.*, 35 C. 529, 85 P. 315.

Sections 55-59 of the act of 1901 cited in a proceeding for the issue and sale of bonds in which action the notice and petition was held insufficient.—*Ahern v. High Line I. Dist.*, 39 C. 412, 89 P. 963.

3490. Same—Petition.

SEC. 326. The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition, praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of said bonds, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected, but the petition need not state the facts showing such organization of the district, or the election of said first board of directors.

Legislation. Sec. 3490. Act 1905 § 51, cited under § 3440.

CITATIONS.

This section referred to in a proceeding to confirm a bond issue.—*Ahern v. High Line I. Dist.*, 39 C. 412, 89 P. 963.

3491. Same—Notice of hearing.

SEC. 327. The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of..... irrigation district, (giving its name) praying that the proceedings for the issue and sale of said bonds of said district may be examined, approved and confirmed by the court.

Legislation. Sec. 3491. Act 1905 § 52, cited under § 3440.

CITATIONS.

This section referred to in a proceeding to confirm a bond issue.—*Ahern v. High Line I. Dist.*, 39 C. 412, 89 P. 963.

3492. Same—Answer—Pleading.

SEC. 328. Any person interested in said district, or in the issue or sale of said bonds, may demur to or answer said petition. The provisions of the code of civil procedure respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The person so demurring and answering said petition shall be the defendant to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material state-

ment of the petition. The rules of pleading and practice relating to appeals and writs of error provided by the code of civil procedure which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for.

Legislation. Sec. 3492. Act 1905 § 53, cited under § 3440.

CITATIONS.

This section referred to in a proceeding to confirm a bond issue.—*Ahern v. High Line I. Dist.*, 39 C. 412, 89 P. 963.

3493. Same—Determination—Costs.

SEC. 329. Upon the hearing of such special proceeding the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings; and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The costs of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court.

Legislation. Sec. 3493. Act 1905 § 54, cited under § 3440.

CITATIONS.

This section referred to in a proceeding to confirm a bond issue.—*Ahern v. High Line I. Dist.*, 39 C. 412, 89 P. 963.

3494. Repeal—Saving clause.

SEC. 330. That an act entitled an act to provide for the

Organization and government of irrigation districts, etc., approved April 12th, 1901, and all acts and parts of acts amendatory thereof, be and the same are hereby repealed. *Provided*, Nothing herein contained shall invalidate or affect any act or proceeding done or pending thereunder; but all such pending proceedings may be continued and concluded under such repealed provisions, the same as if this statute had not been adopted, or may be continued or concluded under the provisions of this act; *And, provided, further*, That nothing herein contained shall impair the organization, rights, powers and privileges of any irrigation district organized under any act or provision so repealed.

Legislation. Sec. 3494. Act 1905 § 55, cited under § 3440.

The Acts repealed were 1901 p. 198 and its amendment, 1903 p. 265.

3494-A. Agricultural college and school lands.

SEC. 330a. For the purpose of furnishing water and securing water rights for agricultural college and public school lands, lying within or adjacent to the boundaries of any irrigation district now organized, or which may hereafter be organized, the state board of land commissioners is hereby authorized to petition all such lands into such irrigation districts.

Legislation. Sec. 3494A. Act 1909 p. 429 § 1, entitled:

AN ACT

To Provide for the Admission of Agricultural College and Public School Lands Into Irrigation Districts; Providing for and Authorizing the Assessment of Agricultural College and Public School Lands Within Irrigation Districts for Irrigation District Purposes; and Providing for the Payment of Such Assessment So Levied.

3494-B. Form and requirements of petition.

SEC. 330b. All such petitions shall be in the form now provided by law for the petition of other lands into such irrigation districts, and shall be signed, sealed and acknowledged by the register of the state board of land commissioners, on behalf of said board, and shall in addition be countersigned by the governor of the state, on behalf of the state, and when so signed, sealed, acknowledged and filed with the board of directors of any irrigation district, shall be deemed to give the assent of said state board of

land commissioners and the state of Colorado to the inclusion of all lands therein described in said irrigation district.

Legislation. Sec. 3494B. Act 1909 § 2, cited under § 3494A.

3494-C. Assessments.

SEC. 330c. All such lands so included in any irrigation district in this state, shall be assessed for irrigation district purposes in the same manner and at the same rate as other lands in such irrigation districts.

Legislation. Sec. 3494C. Act 1909 § 3, cited under § 3494A.

3494-D. Duties of county treasurer and register of land board.

SEC. 330d. It shall be the duty of the county treasurer of each and every county in this state wherein any irrigation district is located, and in which such lands have been so included, to notify the register of the state board of land commissioners, on or before the first day of February of each and every year of the amount of district assessments due on such lands, giving therein the exact description of each tract of land so assessed and the amount of assessments due thereon. Immediately upon receiving such notice it shall be the duty of the register of said state board of land commissioners to place the same before said board at their next regular meeting, who shall examine said notice of assessments due, and if the same be found correct, they shall certify the same to the state treasurer who shall pay the same out of any of the moneys in his hands belonging to said respective land funds howsoever derived, and charge the same to said respective funds. Such payment shall be by warrant from the state treasurer to the proper county treasurer, and when so received by him, he shall issue his receipts therefor in the name of the state board of land commissioners, and shall in addition issue a duplicate receipt to said state treasurer.

Legislation. Sec. 3494D. Act 1909 § 4, cited under § 3494A.

3494-E. Assessments—Accrued assessments.

SEC. 330c. Upon the receipt of such receipts from said county treasurers, it shall be the duty of the register of the state board of

land commissioners to enter and charge the same against each tract of land so paid on, in a book to be kept by him for that purpose, showing the amount paid, date of payment and to whom paid, and whenever any of said tracts of land shall be sold, the purchaser thereof, in addition to the purchase price therefor, shall pay all of such accrued assessments so paid as aforesaid, together with interest thereon, from the date of payment at the rate of 6 per centum per annum, such accrued assessments and interest thereon to be included in the total purchase price to be paid by said purchaser, *Provided*, That this section shall not apply to such assessments as shall have been paid by the lessees of any such tracts of land, theretofore leased from the state as hereinafter provided.

Legislation. Sec. 3494E. Act 1909 § 5, cited under § 3494A.

3494-F. Rent.

SEC. 330f. In the event that any such tracts of land so included within any irrigation district, shall be leased from the state board of land commissioners, then and in that case all such lessees shall in addition to the rental paid to said state board of land commissioners, pay such an additional amount to said board as will equal the district assessments levied upon such lands for the year in which such rental shall be paid; and such moneys when so received by the register of the state board of land commissioners, shall be turned into the state treasurer and be by him kept in a separate fund for the payment of such assessments aforesaid.

Legislation. Sec. 2494F. Act 1909 § 6, cited under § 3494A.

3494-G. Requirements of contracts of sale.

SEC. 330g. All contracts for the sale of any such lands included within any irrigation district shall, in addition to the purchase price to be paid, provide that such purchaser shall on or before the first day of March in each and every year, until he shall have secured a patent for such lands, pay unto the register of the state board of land commissioners such an amount as will equal the district assessments so levied upon such lands for the year in which such payment is to be made, and such moneys when so re-

ceived by said register, shall be turned into the state treasurer and be by him kept in a separate fund for the payment of such assessments aforesaid.

Legislation. Sec. 3494G. Act 1909 § 7, cited under § 3494A.

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3494-H. Petition for organization.

SEC. 330h. It is hereby declared by this general assembly that the reclamation by drainage of lands not at present cultivable or useful or fully so will be conducive to the public health, convenience, utility or welfare, and the owners of agricultural lands susceptible of drainage by the same general system of works may propose the organization of a drainage district, by presenting to the board of county commissioners of the county where the larger portion of said lands lie, a petition giving the name of the proposed district, and praying that the board of county commissioners cause the question of the organization of said district to be submitted to a vote of the owners of the lands lying within the boundaries thereof, or that a drainage system may be established, without election, as provided in section 10 of this act.

Legislation. Sec. 3494-H. Sec. 1 of Act of 1911, S. B. No. 70, entitled:

AN ACT

To Provide for the Organization and Government of Drainage Districts.

(Approved June 2, 1911.)

3494-J. By whom signed—Committee.

SEC. 330j. Said petition shall be signed by a majority of the owners of said lands whether residents or non-residents of said county, as well as by the owners in the aggregate of a majority of the total number of acres of land sought to be included in said district; and shall contain a general description of the boundaries of said proposed district and a statement that the lands within said proposed district are not at present cultivable or useful or fully so, and they can be made more productive or useful by drainage, and shall be accompanied by a map, drawn to a scale of two inches to the mile, and a statement showing generally the drainage ditch, works or system, by which it is proposed to drain said lands, and giving the names of the owner or owners of each tract of land, appearing of record, through which said drainage works are proposed to be constructed, and which will be drained thereby. The petitioners shall select and name in said petition a committee of three or more of said petitioners, to present such

petition to the board of county commissioners and to give notice thereof as provided in section 6 of this act.

Legislation. Sec. 3494-J. Sec. 2 of Act of 1911, cited under § 3494-H.

3494-K. Bond.

SEC. 330k. Said petition shall be accompanied by a good and sufficient bond with sureties to be approved by the said board of county commissioners, in a penal sum double the amount of the probable cost of organizing said district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected.

Legislation. Sec. 3494-K. Sec. 3 of Act of 1911, cited under § 3494-H.

3494-L. Advance of costs.

SEC. 330l. In lieu of a bond the board of county commissioners may in its discretion require the petitioners to pay in advance to the county treasurer from time to time such sum or sums of money as in the opinion of the board of county commissioners, will be required for the costs and expenses of organizing said district.

Legislation. Sec. 3494-L. Sec. 4 of Act of 1911, cited under § 3494-H.

3494-M. Expenses by whom paid.

SEC. 330m. In case the district shall be organized, the expenses incurred by the county shall be paid to the county by said district, and all advances made by the petitioners to the county shall be refunded by the county to the petitioners, who shall have advanced the same.

Legislation. Sec. 3494-M. Sec. 5 of Act of 1911, cited under § 3494-H.

3494-N. Publication of petition.

SEC. 330n. Prior to the presentation of said petition to the board of county commissioners, said petition shall be published in some newspaper of general circulation, printed and published in the county where said petition will be presented, for at least two weeks, together with a notice signed by the committee selected

— named in said petition, giving the time
— of the same to the board of county

— Sec. 6 of Act of 1911, cited under § 3494-H.

~~—~~ **in the petition.**

— time and place designated in said notice.
— the notice of the presentation of said peti-
— required by law and that said petition has
— number of petitioners required by this act,
— commissioners shall hear said petition, and
— exclusion of lands from said district and
— exclusion of lands therein, and may adjourn
— to time not exceeding four weeks in all.

— Sec. 7 of Act of 1911, cited under § 3494-H

~~—~~ **boundaries.**

— of county commissioners of said county
— the boundaries of said proposed district
— including therein upon the application of
— of other lands susceptible of drainage
— which will be benefited by said system
— including therefrom lands mentioned in said
— of said board of county commissioners
— of drainage thereby or will not be bene-
— of drainage, but said board of county com-
— de from said district any lands described
— in the opinion of the board, are susceptible
— system or will be benefited thereby

— Sec. 8 of Act of 1911, cited under § 3494-H.

~~—~~ **prayer.**

— the boundaries of any proposed drainage
— determined as aforesaid, the board of
— shall mak following the prayer

of said petition, defining and establishing the boundaries and designating the name of the proposed district.

Legislation. Sec. 3494-Q. Sec. 9 of Act of 1911, cited under § 3494-H.

3494-R. County commissioners when to act as district directors.

SEC. 330r. When the prayer of said petition is that a drainage system may be established without holding an election and it appears that a large portion of the land which will be benefited by the proposed drainage system, is unoccupied land or so many of the owners of land to be benefited thereby are not residents upon the land, that an election would be impracticable or would entail an undue expense, the board of county commissioners of said county is hereby authorized at any regular or special session, to cause a system of drainage to be constructed, and to exercise all the powers and authority, in this act conferred upon boards of directors of drainage districts, and shall continue to exercise said powers and authority and perform the duties of boards of directors, until a petition shall be presented signed by the owners of the larger portion of said lands, or their duly authorized agents, praying that an election may be called to elect directors for said district, when the board of county commissioners shall call an election for that purpose and as soon as the result of said election is determined the board of county commissioners shall cease to have or exercise the duties of directors of a drainage district.

Legislation. Sec. 3494-R. Sec. 10 of Act of 1911, cited under § 3494-H.

3494-S. Election notice.

SEC. 330s. When the petition prays that an election shall be held, the board of county commissioners shall order an election to be held within the proposed drainage district for the purpose of determining whether or not said district shall be organized and shall cause to be published a notice of said election which shall contain:

The name of the proposed district;

The boundaries thereof;

The polling place or polling places;

The names of the judges of election;

The names of three or more persons eligible for directors of said district;

The date of said election;

Said notice shall require the electors to cast ballots which shall contain the words:

"Drainage District—Yes;" or

"Drainage District—No."

Said notice shall be signed by the chairman of the board of county commissioners and attested by the county clerk under the seal of the county.

Legislation. Sec. 3494-S. Sec. 11 of Act of 1911, cited under § 3494-H.

3494-T. Three directors—Division of district.

SEC. 330t. There shall be elected three directors who shall be owners of land within said district; but the board of county commissioners may divide, and if requested in said petition shall divide said district into three divisions, as nearly equal as conveniently may be, which shall be numbered 1, 2 and 3, respectively, and in that event, the voters of each division shall elect one director, who shall be the owner of land within said division, and the three thus elected shall be the directors of said district.

Legislation. Sec. 3494-T. Sec. 12 of Act of 1911, cited under § 3494-H.

3494-U. Polling places.

SEC. 330u. The board of county commissioners shall designate a polling place within said district and, if necessary, shall establish a convenient number of election precincts within said district, define the boundaries thereof, and designate the polling place in each precinct.

Legislation. Sec. 3494-U. Sec. 13 of Act of 1911, cited under § 3494-H.

3494-V. Judges of election.

SEC. 330v. The board of county commissioners shall appoint

for each precinct from the qualified electors who shall be owners of lands therein three judges of election who shall exercise the powers and duties usually performed by judges of election in this state.

Legislation. Sec. 3494-V. Sec. 14 of Act of 1911, cited under § 3494-H.

3494-W. Publication of notice.

SEC. 330w. Said notice shall be published for at least two weeks preceding said election in a newspaper of general circulation, printed and published, within said county; and a like notice shall be published in a like newspaper in each county, within which any portion of said district may lie.

Legislation. Sec. 3494-W. Sec. 15 of Act of 1911, cited under § 3494-H.

3494-X. Qualified voters.

SEC. 330x. Every owner of land within said district, who is a citizen of the United States, or has declared his intention to become a citizen of the United States, and is a resident of the state of Colorado, shall be entitled to vote at such election in the precinct where he resides, or if a non-resident of the precinct, then in the precinct within which the greater portion of his land lies.

Legislation. Sec. 3494-X. Sec. 16 of Act of 1911, cited under § 3494-H.

3494-Y. Canvass of vote.

SEC. 330y. The board of county commissioners shall meet on the second Monday following said election and proceed to canvass the votes cast thereat; and, if it shall appear that a majority of the votes cast are, "Drainage District—Yes," the board of county commissioners shall make an order declaring that said drainage district is duly organized under the name theretofore designated and that the persons who receive the highest number of votes respectively, are duly elected directors of said district.

Legislation. Sec. 3494-Y. Sec. 17 of Act of 1911, cited under § 3494-H.

ceived by said register, shall be turned into the state treasurer and be by him kept in a separate fund for the payment of such assessments aforesaid.

Legislation. Sec. 3494G. Act 1909 § 7, cited under § 3494A.

VIII-A. DRAINAGE DISTRICTS.

Section.

- 3494-H. Petition for organization.
- 3494-J. By whom signed—Committee.
- 3494-K. Bond.
- 3494-L. Advance of costs.
- 3494-M. Expenses by whom paid.
- 3494-N. Publication of petition.
- 3494-O. Hearing on the petition.
- 3494-P. Change of boundaries.
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- 3494-R. County commissioners when to act as district directors.
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- 3494-T. Three directors—Division of district.
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- 3494-Z. File plat with clerk.
- 3494-A1. Organization when complete.
- 3494-B1. Action affecting organization.
- 3494-C1. President and secretary—Seal.
- 3494-D1. Powers of board.
- 3494-E1. Surveys—Contracts.
- 3494-F1. Quarterly meetings.
- 3494-G1. Meetings public—Quorum—Record.
- 3494-H1. Right of entry.
- 3494-J1. Title vests in district—Tax exemption.
- 3494-K1. Corporate powers.
- 3494-L1. Per diem expenses—Salary.
- 3494-M1. Annual election of directors.
- 3494-N1. Oath of office.
- 3494-O1. Bond of directors.
- 3494-P1. Office.
- 3494-Q1. Notice of election.
- 3494-R1. Judges of election.
- 3494-S1. Idem.
- 3494-T1. Election oaths.

VIII-A. DRAINAGE DISTRICTS.

Continued.

Section.

- 3494-U1. Polls open and close.
- 3494-V1. Count of ballots.
- 3494-W1. Canvass of returns.
- 3494-X1. Tie vote.
- 3494-Y1. Announcement of result of election.
- 3494-Z1. Certificate of election.
- 3494-A2. Vacancies how filled.
- 3494-B2. Treasurer of district.
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- 3494-D2. Monthly remittances—Warrants.
- 3494-E2. Warrants to be signed and sealed.
- 3494-F2. Interest after presentation.
- 3494-G2. Verification of claims—Register.
- 3494-H2. Registry—Vouchers.
- 3494-J2. Report of treasurer.
- 3494-K2. Annual estimate.
- 3494-L2. Assessments for interest.
- 3494-M2. Assessment book—Annual audit.
- 3494-N2. Returns to assessor.
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- 3494-P2. Reference to revenue law.
- 3494-Q2. Advertisement for bids.
- 3494-R2. Contractors to give bond.
- 3494-S2. Special election on bond issue.
- 3494-T2. Election notice.
- 3494-U2. Bonds payable in series—Interest.
- 3494-V2. Details as to bonds and coupons.
- 3494-W2. Bonds under 20 years.
- 3494-X2. Additional issue of bonds—Lien.
- 3494-Y2. Sale of bonds.
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- 3494-A3. Annual assessment to pay bonds.
- 3494-B3. Right of way.
- 3494-C3. Right of way over state land.
- 3494-D3. Directors not to be interested in contracts.
- 3494-E3. Property in certain water.
- 3494-F3. Vacancies.
- 3494-G3. Judicial notice.
- 3494-H3. Annexation of new acreage.
- 3494-J3. Judicial proceedings same as in case of irrigation districts.
- 3494-K3. Voluntary contract for drainage district.
- 3494-L3. Approval of voluntary district by county commissioners.
- 3494-M3. Petition to dissolve.
- 3494-N3. Order of dissolution.
- 3494-O3. Repeal with saving clause.

3494-H. Petition for organization.

SEC. 330h. It is hereby declared by this general assembly that the reclamation by drainage of lands not at present cultivable or useful or fully so will be conducive to the public health, convenience, utility or welfare, and the owners of agricultural lands susceptible of drainage by the same general system of works may propose the organization of a drainage district, by presenting to the board of county commissioners of the county where the larger portion of said lands lie, a petition giving the name of the proposed district, and praying that the board of county commissioners cause the question of the organization of said district to be submitted to a vote of the owners of the lands lying within the boundaries thereof, or that a drainage system may be established, without election, as provided in section 10 of this act.

Legislation. Sec. 3494-H. Sec. 1 of Act of 1911, S. B. No. 70, entitled:

AN ACT

To Provide for the Organization and Government of Drainage Districts.

(Approved June 2, 1911.)

3494-J. By whom signed—Committee.

SEC. 330j. Said petition shall be signed by a majority of the owners of said lands whether residents or non-residents of said county, as well as by the owners in the aggregate of a majority of the total number of acres of land sought to be included in said district; and shall contain a general description of the boundaries of said proposed district and a statement that the lands within said proposed district are not at present cultivable or useful or fully so, and they can be made more productive or useful by drainage, and shall be accompanied by a map, drawn to a scale of two inches to the mile, and a statement showing generally the drainage ditch, works or system, by which it is proposed to drain said lands, and giving the names of the owner or owners of each tract of land, appearing of record, through which said drainage works are proposed to be constructed, and which will be drained thereby. The petitioners shall select and name in said petition a committee of three or more of said petitioners, to present such

petition to the board of county commissioners and to give notice thereof as provided in section 6 of this act.

Legislation. Sec. 3494-J. Sec. 2 of Act of 1911, cited under § 3494-H.

3494-K. Bond.

SEC. 330k. Said petition shall be accompanied by a good and sufficient bond with sureties to be approved by the said board of county commissioners, in a penal sum double the amount of the probable cost of organizing said district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected.

Legislation. Sec. 3494-K. Sec. 3 of Act of 1911, cited under § 3494-H.

3494-L. Advance of costs.

SEC. 330l. In lieu of a bond the board of county commissioners may in its discretion require the petitioners to pay in advance to the county treasurer from time to time such sum or sums of money as in the opinion of the board of county commissioners, will be required for the costs and expenses of organizing said district.

Legislation. Sec. 3494-L. Sec. 4 of Act of 1911, cited under § 3494-H.

3494-M. Expenses by whom paid.

SEC. 330m. In case the district shall be organized, the expenses incurred by the county shall be paid to the county by said district, and all advances made by the petitioners to the county shall be refunded by the county to the petitioners, who shall have advanced the same.

Legislation. Sec. 3494-M. Sec. 5 of Act of 1911, cited under § 3494-H.

3494-N. Publication of petition.

SEC. 330n. Prior to the presentation of said petition to the board of county commissioners, said petition shall be published in some newspaper of general circulation, printed and published in the county where said petition will be presented, for at least two weeks, together with a notice signed by the committee selected

by the petitioners and named in said petition, giving the time and place of the presentation of the same to the board of county commissioners.

Legislation. Sec. 3494-N. Sec. 6 of Act of 1911, cited under § 3494-H.

3494-O. Hearing on the petition.

SEC. 330o. At the time and place designated in said notice, if it shall appear that the notice of the presentation of said petition has been given as required by law and that said petition has been signed by the number of petitioners required by this act, the board of county commissioners shall hear said petition, and applications for the exclusion of lands from said district and applications for the inclusion of lands therein, and may adjourn such hearing from time to time not exceeding four weeks in all.

Legislation. Sec. 3494-O. Sec. 7 of Act of 1911, cited under § 3494-H.

3494-P. Change of boundaries.

SEC. 330p. The board of county commissioners of said county may make such changes in the boundaries of said proposed district as may be necessary by including therein upon the application of the owner or owners thereof other lands susceptible of drainage by the proposed system, or which will be benefited by said system of drainage, and by excluding therefrom lands mentioned in said petition which in the opinion of said board of county commissioners will not be susceptible of drainage thereby or will not be benefited by said system of drainage, but said board of county commissioners shall not exclude from said district any lands described in said petition which, in the opinion of the board, are susceptible of drainage by said system or will be benefited thereby

Legislation. Sec. 3494-P. Sec. 8 of Act of 1911, cited under § 3494-H.

3494-Q. Order granting prayer.

SEC. 330q. When the boundaries of any proposed drainage district shall have been determined as aforesaid, the board of county commissioners shall make an order allowing the prayer

of said petition, defining and establishing the boundaries and designating the name of the proposed district.

Legislation. Sec. 3494-Q. Sec. 9 of Act of 1911, cited under § 3494-H.

3494-R. County commissioners when to act as district directors.

SEC. 330r. When the prayer of said petition is that a drainage system may be established without holding an election and it appears that a large portion of the land which will be benefited by the proposed drainage system, is unoccupied land or so many of the owners of land to be benefited thereby are not residents upon the land, that an election would be impracticable or would entail an undue expense, the board of county commissioners of said county is hereby authorized at any regular or special session, to cause a system of drainage to be constructed, and to exercise all the powers and authority, in this act conferred upon boards of directors of drainage districts, and shall continue to exercise said powers and authority and perform the duties of boards of directors, until a petition shall be presented signed by the owners of the larger portion of said lands, or their duly authorized agents, praying that an election may be called to elect directors for said district, when the board of county commissioners shall call an election for that purpose and as soon as the result of said election is determined the board of county commissioners shall cease to have or exercise the duties of directors of a drainage district.

Legislation. Sec. 3494-R. Sec. 10 of Act of 1911, cited under § 3494-H.

3494-S. Election notice.

SEC. 330s. When the petition prays that an election shall be held, the board of county commissioners shall order an election to be held within the proposed drainage district for the purpose of determining whether or not said district shall be organized and shall cause to be published a notice of said election which shall contain:

The name of the proposed district;

The boundaries thereof;

The polling place or polling places;

The names of the judges of election;

The names of three or more persons eligible for directors of said district;

The date of said election;

Said notice shall require the electors to cast ballots which shall contain the words:

"Drainage District—Yes;" or

"Drainage District—No."

Said notice shall be signed by the chairman of the board of county commissioners and attested by the county clerk under the seal of the county.

Legislation. Sec. 3494-S. Sec. 11 of Act of 1911, cited under § 3494-H.

3494-T. Three directors—Division of district.

SEC. 330t. There shall be elected three directors who shall be owners of land within said district; but the board of county commissioners may divide, and if requested in said petition shall divide said district into three divisions, as nearly equal as conveniently may be, which shall be numbered 1, 2 and 3, respectively, and in that event, the voters of each division shall elect one director, who shall be the owner of land within said division, and the three thus elected shall be the directors of said district.

Legislation. Sec. 3494-T. Sec. 12 of Act of 1911, cited under § 3494-H.

3494-U. Polling places.

SEC. 330u. The board of county commissioners shall designate a polling place within said district and, if necessary, shall establish a convenient number of election precincts within said district, define the boundaries thereof, and designate the polling place in each precinct.

Legislation. Sec. 3494-U. Sec. 13 of Act of 1911, cited under § 3494-H.

3494-V. Judges of election.

SEC. 330v. The board of county commissioners shall appoint

for each precinct from the qualified electors who shall be owners of lands therein three judges of election who shall exercise the powers and duties usually performed by judges of election in this state.

Legislation. Sec. 3494-V. Sec. 14 of Act of 1911, cited under § 3494-H.

3494-W. Publication of notice.

SEC. 330w. Said notice shall be published for at least two weeks preceding said election in a newspaper of general circulation, printed and published, within said county; and a like notice shall be published in a like newspaper in each county, within which any portion of said district may lie.

Legislation. Sec. 3494-W. Sec. 15 of Act of 1911, cited under § 3494-H.

3494-X. Qualified voters.

SEC. 330x. Every owner of land within said district, who is a citizen of the United States, or has declared his intention to become a citizen of the United States, and is a resident of the state of Colorado, shall be entitled to vote at such election in the precinct where he resides, or if a non-resident of the precinct, then in the precinct within which the greater portion of his land lies.

Legislation. Sec. 3494-X. Sec. 16 of Act of 1911, cited under § 3494-H.

3494-Y. Canvass of vote.

SEC. 330y. The board of county commissioners shall meet on the second Monday following said election and proceed to canvass the votes cast thereat; and, if it shall appear that a majority of the votes cast are, "Drainage District—Yes," the board of county commissioners shall make an order declaring that said drainage district is duly organized under the name theretofore designated and that the persons who receive the highest number of votes respectively, are duly elected directors of said district.

Legislation. Sec. 3494-Y. Sec. 17 of Act of 1911, cited under § 3494-H.

3494-Z. File plat with clerk.

SEC. 330z. The board of county commissioners shall cause a certified copy of said order, together with a copy of the plat of said district to be filed with the county clerk of each county in which any portion of said district lies, and thereafter no land within said district shall be included within the boundaries of any other drainage district, without the consent of the owner of the land sought to be embraced within such other district.

Legislation. Sec. 3494-Z. Sec. 18 of Act of 1911, cited under § 3494-H.

3494-A1. Organization when complete.

SEC. 330a1. From and after the date of such filing the organization of said district shall be complete, and the officers thereof shall forthwith enter upon the duties of their respective offices, upon qualifying according to law, and shall hold their respective offices until their successors are elected and qualified.

Legislation. Sec. 3494-A1. Sec. 19 of Act of 1911, cited under § 3494-H.

3494-B1. Action affecting organization.

SEC. 330b1. No action shall be brought or maintained or defense made, affecting the validity of the organization of said district, unless the same shall have commenced or made within one year after the entry of said order.

Legislation. Sec. 3494-B1. Sec. 20 of Act of 1911, cited under § 3494-H.

3494-C1. President and secretary—Seal.

SEC. 330c1. The board of directors shall elect a president from the members of the board and shall appoint a secretary, and adopt a drainage district seal.

Legislation. Sec. 3494-C1. Sec. 21 of Act of 1911, cited under § 3494-H.

3494-D1. Powers of board.

SEC. 330d1. The board of directors shall have the care and management of the affairs and business of the drainage district: and shall fix the compensation of all employees.

Legislation. Sec. 3494-D1. Sec. 22 of Act of 1911, cited under § 3494-H.

3494-E1. Surveys—Contracts.

SEC. 330e1. The board of directors may cause surveys to be made for ditches and drainage works and rights of way for said district; and to cause ditches, drainage works, rights of way, and other property, necessary for said district, to be laid out, constructed, purchased and acquired, by condemnation or otherwise, but the board of directors shall have no power to make any contract or authorize any expenditure involving more than \$5,000 unless such contract or expenditures shall be authorized, approved and ratified in writing, by owners of land in said drainage district equal in number to a majority of votes cast at the last district election; and no contract or expenditure involving more than \$10,000 shall be made or be binding unless the question of making said contract or expenditure shall have been submitted and said expenditure authorized at an election in said district.

Legislation. Sec. 3494-E1. Sec. 23 of Act of 1911, cited under § 3494-H.

3494-F1. Quarterly meetings.

SEC. 330f1. The board of directors shall hold a regular meeting in the office of the drainage district on the first Tuesday in January, April, July and October, and such special meetings as may be required for the proper transaction of business. Special meetings shall be called by the president of the board, or any director.

Legislation. Sec. 3494-F1. Sec. 24 of Act of 1911, cited under § 3494-H.

3494-G1. Meetings public—Quorum—Record.

SEC. 330g1. Meetings of the board of directors shall be public, and two directors shall constitute a quorum for the transaction of business; on all questions requiring a vote there shall be a concurrence of at least two directors. The record of the board shall be open to the inspection of the public during business hours.

Legislation. Sec. 3494-G1. Sec. 25 of Act of 1911, cited under § 3494-H.

3494-H1. Right of entry.

SEC. 330h1. The directors, agents and employees of the drainage district shall have the right to enter upon any land in

the district to make surveys and to locate drainage ditches and laterals.

Legislation. Sec. 3494-H1. Sec. 26 of Act of 1911, cited under § 3494-H.

3494-J1. Title vests in district—Tax exemption.

SEC. 330j1. The title to property acquired under the provisions of this act shall vest in such drainage district, in its corporate name; said property shall be held by such district in trust for, and is hereby dedicated and set apart for, the uses and purposes set forth in this act, and shall be exempt from taxation, and the board of directors is hereby authorized and empowered to hold, use and acquire, manage, occupy and possess said property as herein provided.

Legislation. Sec. 3494-J1. Sec. 27 of Act of 1911, cited under § 3494-H.

3494-K1. Corporate powers.

SEC. 330k1. The said board of directors is hereby authorized and empowered to take conveyances or assurances in the name of the drainage district for all property acquired by it under the provisions of this act, and to institute and maintain any and all actions, proceedings and suits, at law or in equity, necessary or proper in order fully to carry out the provisions of this act or to enforce, maintain, protect or preserve any or all rights, privileges and immunities created by this act or acquired in pursuance thereof.

Legislation. Sec. 3494-K1. Sec. 28 of Act of 1911, cited under § 3494-H.

3494-L1. Per diem expenses—Salary.

SEC. 330l1. The directors shall each receive two and one-half dollars per day while attending meetings or while engaged in the business of the district, together with their actual and necessary expenses to be paid only on itemized statements subscribed by such directors. The salary of the secretary shall not exceed five hundred dollars per annum.

Legislation. Sec. 3494-L1. Sec. 29 of Act of 1911, cited under § 3494-H.

3494-M1. Annual election of directors.

SEC. 330m1. The regular election of directors of drainage districts shall be held on the first Tuesday after the first Monday in January of each alternate year, at which three directors shall be elected. The three persons receiving the highest number of votes shall be the directors for the next succeeding two years and until their respective successors are elected and qualified.

Legislation. Sec. 3494-M1. Sec. 30 of Act of 1911, cited under § 3494-H.

3494-N1. Oath of office.

SEC. 330n1. Within ten days after receiving a certificate of election as hereinafter provided, each of said directors shall take and subscribe the official oath, and file the same together with his official bond in the office of the county clerk of the county where the organization of the district was effected, and thereupon assume the duties of his office.

Legislation. Sec. 3494-N1. Sec. 31 of Act of 1911, cited under § 3494-H.

3494-O1. Bond of directors.

SEC. 330o1. Each director shall execute a bond in the penal sum of \$2,000 with sureties approved by the county Judge of the county where said organization was effected and file the same in the office of the county clerk of said county. Said bond shall be in the form prescribed by law for county officers, making the drainage district obligee therein.

Legislation. Sec. 3494-O1. Sec. 32 of Act of 1911, cited under § 3494-H.

3494-P1. Office.

SEC. 330p1. The office of the drainage district shall be located in the county where the organization is effected, at some fixed place to be determined by the board of directors of the drainage district.

Legislation. Sec. 3494-P1. Sec. 33 of Act of 1911, cited under § 3494-H.

Secs. 3494-Q1.-3494-T1. COLO. STATUTES ANNOTATED. Chap. 72

3494-Q1. Notice of election.

SEC. 330q1. Fifteen days prior to any election held under the provisions of this act, subsequent to the organization of a drainage district, the secretary shall cause notices specifying the polling place of each precinct to be posted in three public places in each precinct, giving the hour and place of holding the election, and at the same time shall post a general election notice of said election in the office of said drainage district.

Legislation. Sec. 3494-Q1. Sec. 34 of Act of 1911, cited under § 3494-H.

3494-R1. Judges of election.

SEC. 330r1. Prior to the time for posting said notices, the board of directors shall appoint three judges of election in each precinct, each of whom shall be a land owner within said precinct, and one of whom shall act as clerk of the election.

Legislation. Sec. 3494-R1. Sec. 35 of Act of 1911, cited under § 3494-H.

3494-S1. Idem.

SEC. 330s1. If the board of directors fails to appoint judges or the appointees fail to attend at the hour designated for opening the polls on the morning of election, the voters of the precinct present at that hour may appoint one or more judges to supply the places of those absent.

Legislation. Sec. 3494-S1. Sec. 36 of Act of 1911, cited under § 3494-H.

3494-T1. Election oaths.

SEC. 330t1. Any judge or clerk of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls each judge and clerk shall take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath.

Legislation. Sec. 3494-T1. Sec. 37 of Act of 1911, cited under § 3494-H.

3494-U1. Polls open and close.

SEC. 330u1. The polls shall be opened at eight o'clock in the morning and be kept open until six o'clock of the afternoon of the day of election.

Legislation. Sec. 3494-U1. Sec. 38 of Act of 1911, cited under § 3494-H.

3494-V1. Count of ballots.

SEC. 330v1. After the closing of the polls the judges of election shall forthwith proceed to count the ballots and make returns of the result of the election. It shall be the duty of the clerk forthwith to deliver the returns duly certified to the board of directors of the drainage district, together with the ballots cast.

Legislation. Sec. 3494-V1. Sec. 39 of Act of 1911, cited under § 3494-H.

3494-W1. Canvass of the returns.

SEC. 330w1. The board of directors shall meet at the office of the drainage district on the first Monday after an election and canvass the returns. If at the time of the meeting the returns have been received from all the precincts, the board of directors shall then and there proceed to canvass the returns; if returns have not been received from all the precincts, the canvass shall be postponed from day to day until the returns have all been received or until six postponements have been had. The canvass shall be made in public by opening the returns and counting the votes of the district for each person voted for and for or against each question submitted at such election and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes for each office, and shall declare the result of the vote on any question submitted to the voters.

Legislation. Sec. 3494-W1. Sec. 40 of Act of 1911, cited under § 3494-H.

3494-X1. Tie vote.

SEC. 330x1. In the event that at any regular or special election two or more persons shall receive the same number of votes and one is elected thereby, the election shall be determined

by lot under direction of the county judge of the county in which the office of drainage district is kept.

Legislation. Sec. 3494-X1. Sec. 41 of Act of 1911, cited under § 3494-H.

3494-Y1. Announcement of result of election.

SEC. 330y1. As soon as the result of any election held under the provisions of this act is declared, the secretary of the board of directors shall enter in the record of the board of directors and file with the county clerk of the county in which the office of said district is located, a statement of the result.

Said statement shall contain:

First—A copy of the published notice of said election.

Second—The names of the judges of election.

Third—The number of votes cast in the district and in each precinct of the district.

Fourth—The office to fill which each person was voted for.

Fifth—The number of votes cast in each precinct for each person.

Sixth—The number of votes cast in the district for each person.

Seventh—The names of the persons elected.

Eighth—The result of any question submitted to the voters at said election.

Legislation. Sec. 3494-Y1. Sec. 42 of Act of 1911, cited under § 3494-H.

3494-Z1. Certificate of election.

SEC. 330z1. The secretary shall forthwith deliver to each person elected a certificate of election, signed by the secretary and authenticated with the seal of the drainage district.

Legislation. Sec. 3494-Z1. Sec. 43 of Act of 1911, cited under § 3494-H.

3494-A2. Vacancies how filled.

SEC. 330a2. In case of a vacancy in the board of directors, by death, removal or inability from any cause, to properly discharge

the duties of a director, the board of county commissioners of the county where the office of said director is located shall appoint a director who shall hold his office until the next regular election in said district and until his successor is elected and qualified.

Legislation. Sec. 3494-A2. Sec. 44 of Act of 1911, cited under § 2494-H.

3494-B2. Treasurer of district.

SEC. 330b2. The county treasurer of the county in which the office of the drainage district is kept, shall be ex officio treasurer of the drainage district, and shall be liable on his official bond for the safety and disbursement of the funds of said drainage district, which may come into his hands.

Legislation. Sec. 3494-B2. Sec. 45 of Act of 1911, cited under § 3494-H.

3494-C2. Duties of treasurer.

SEC. 330c2. Said treasurer shall collect, receive and receipt for all moneys belonging to said drainage district; it shall be the duty of the county treasurer of each county in which any drainage district is located in whole or in part to collect and receipt for all assessments levied as herein provided for in the same manner and at the same time and upon the same receipt as is required in the collection of taxes upon real estate for county purposes.

Legislation. Sec. 3494-C2. Sec. 46 of Act of 1911, cited under § 3494-H.

3494-D2. Monthly remittances—Warrants.

SEC. 330d2. The county treasurer of each county comprising a portion only of a drainage district, shall on the first Monday of each month remit to the treasurer of the drainage district all moneys belonging to said drainage district, and the board of directors is hereby authorized to pay all legal claims against said district by warrants drawn on the district treasurer, as in this act provided.

Legislation. Sec. 3494-D2. Sec. 47 of Act of 1911, cited under § 3494-H.

3494-E2. Warrants to be signed and sealed.

SEC. 330e2. The treasurer of the drainage district shall pay out the funds of said district only upon warrants ordered by the

board of directors of the drainage district, signed by its president and attested by its secretary, under the seal of the drainage district.

Legislation. Sec. 3494-E2. Sec. 48 of Act of 1911, cited under § 3494-H.

3494-F2. Interest after presentation.

SEC. 330f2. When any warrants of a drainage district are presented to the treasurer and there are no funds in his hands to pay the same, he shall stamp the same in the same manner as ordinary county warrants are stamped and they shall draw interest at the rate of six per cent. per annum from the date of their presentation until paid.

Legislation. Sec. 3494-F2. Sec. 49 of Act of 1911, cited under § 3494-H.

3494-G2. Verification of claims—Register.

SEC. 330g2. All claims against a drainage district shall be verified as is required in the case of claims against counties, and the directors and secretary of the drainage district are hereby authorized and empowered to administer oaths to the parties verifying said claims. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, giving the date and amount of the warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid, and all warrants shall be paid in the order of their presentation for payment to the district treasurer, and when paid be cancelled across the face. All warrants shall be drawn payable to the claimant or bearer.

Legislation. Sec. 3494-G2. Sec. 50 of Act of 1911, cited under § 3494-H.

3494-H2. Registry—Vouchers.

SEC. 330h2. The secretary shall keep a registry of all warrants drawn by order of the board of directors showing the date, amount, name of payee, and for what purposes drawn and no warrant shall be issued except upon an itemized voucher duly verified stating the services rendered or material furnished the district and by whom ordered or contracted.

Legislation. Sec. 3494-H2. Sec. 51 of Act of 1911, cited under § 3494-H.

3494-J2. Report of treasurer.

SEC. 330j2. At each regular meeting of the directors of a drainage district and as much oftener as may be required, the treasurer shall report in writing the amount of money on hand, the amount received since his last report, and the amounts paid out, with a list of warrants presented since the last report; said report shall be sworn to and filed with the secretary of the board of directors.

Legislation. Sec. 3494-J2. Sec. 52 of Act of 1911, cited under § 3494-H.

3494-K2. Annual estimate.

SEC. 330k2. The board of directors on or before July first in each year shall determine the amount of money required to meet the current expenses of the coming year, including cost of construction, maintenance, operating, and ordinary expenses, deficiency in the payment of expenses already incurred and bond interest unpaid, and shall fix the amount per acre necessary to be assessed against the lands of said district to pay the same, and shall cause an order to be entered that each tract of land within said district shall be assessed at said rate per acre.

Legislation. Sec. 3494-K2. Sec. 53 of Act of 1911, cited under § 3494-H.

3494-L2. Assessments for interest.

SEC. 330l2. The board of directors at the same time shall enter an order showing the amount of bonded indebtedness, the principal or interest which will fall due during said coming year and the amount per acre necessary to pay the same, and shall cause an order to be entered that each tract of land within said district shall be assessed at said rate per acre for the purpose of paying said interest and principal of said bonds.

Legislation. Sec. 3494-L2. Sec. 54 of Act of 1911, cited under § 3494-H.

3494-M2. Assessment book—Annual audit.

SEC. 330m2. Immediately after entering said orders the secretary of the board of directors shall prepare an assessment book showing by counties the several tracts of land in each county, the

number of acres in each tract, if known, and if not known noting that fact, the amount assessed against each tract, for current expenses and the amount for bonded indebtedness, and shall complete the same on or before the fifteenth day of July and on the first Tuesday in August in each year and from day to day thereafter, Sundays excepted, the board of directors shall sit to hear and determine complaints, and to correct errors in said assessment, until all complaints filed with the secretary, or presented to the board shall have had an opportunity to be heard, and shall have been determined.

Legislation. Sec. 3494-M2. Sec. 55 of Act of 1911, cited under § 3494-H.

3494-N2. Returns to assessor.

SEC. 330n2. On or before the first day of September in each year the secretary shall transmit to the county assessor of each county a certified copy of so much of said assessment book as relates to land within the county of said county assessor, together with a certified copy of the order of the board of directors, and the county assessor shall attach his warrant for the collection of said amounts, and deliver said certified copies and said warrant to the county treasurer of his county, at the same time that the tax roll of the county is delivered and the county treasurer shall collect said assessments as taxes are collected, as a part of the tax roll for said year.

Legislation. Sec. 3494-N2. Sec. 56 of Act of 1911, cited under § 3494-H.

3494-O2. Assessment book to district treasurer.

SEC. 330o2. The secretary of the board of directors shall deliver the assessment book, duly certified, together with a certified copy of the order of the board of directors, levying said assessment, to the district treasurer of said drainage district.

Legislation. Sec. 3494-O2. Sec. 57 of Act of 1911, cited under § 3494-H.

3494-P2. Reference to revenue law.

SEC. 330p2. The laws of this state for the collection of general taxes including the laws for the sale of property for taxes and the redemption of the same shall apply and have full force and

effect for the purposes of this act, and the provisions of this act for collecting the same shall be deemed and construed to be for the purpose of carrying into effect the police powers in this act granted to drainage districts for the construction and maintenance of drainage systems and shall not be construed as imposing a special tax under the taxing power.

Legislation. Sec. 3494-P2. Sec. 58 of Act of 1911, cited under § 3494-H.

3494-Q2. Advertisement for bids.

SEC. 330q2. After adopting a plan for a drainage system and providing for the payment of the same, or a designated part thereof by assessment or bonds, the board of directors shall give notice, by publication not less than twenty days in a newspaper, published in the county where the office of the drainage district is kept, and in such other newspaper as may be deemed advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole, then the portion of said system to be constructed shall be described in the notice; the notice shall set forth where the plans and specifications may be seen, and that sealed proposals will be received at the office of the drainage district and a contract let to the lowest responsible bidder, giving the time and place for opening the proposals, which, at said time and place, shall be opened in public. The board of directors may enter into a contract with the lowest responsible bidder, for the construction of the whole or any portion of the work mentioned in the notice, or may reject any and all bids and re-advertise for proposals, or may proceed to construct the work under the supervision of the board of directors, and in that event all material shall be purchased of the lowest responsible bidders after proposals have been invited and notice thereof published as aforesaid.

Legislation. Sec. 3494-Q2. Sec. 59 of Act of 1911, cited under § 3494-H.

3494-R2. Contractors to give bond.

SEC. 330r2. The person or persons to whom a contract may be awarded shall execute a bond in the penal sum of not less than ten per cent. of the contract price, with surety to be approved by the board of directors, payable to the drainage district, con-

ditioned for the faithful performance of the contract. All work shall be done under the direction and to the satisfaction of the engineer employed by the drainage district subject to approval by the board of directors.

Legislation. Sec. 3494-R2. Sec. 60 of Act of 1911, cited under § 3494-H

3494-S2. Special election on bond issue.

SEC. 330s2. For the purpose of constructing a drainage system and necessary works for any drainage district and acquiring the necessary property and rights therefor, for the purpose of paying the first year's interest upon the bonds herein authorized, and otherwise carrying out the provisions of this act the board of directors of any drainage district may estimate and determine the amount of money necessary to be raised for such purposes and is hereby empowered to call a special election at which election shall be submitted to the electors of such drainage district possessing the qualifications prescribed by this act the question of whether or not the bonds of said district shall be issued in the amount so determined.

Legislation. Sec. 3494-S2. Sec. 61 of Act of 1911, cited under § 3494-H

3494-T2. Election notice.

SEC. 330t2. A notice of such election shall be given by posting notices in three public places in each election precinct in said district for at least twenty days, and by publication of such notice in some newspaper published in the county where the office of the drainage district is required to be kept, once a week for at least three successive weeks. The notice shall specify the time of holding the election, the amount of bonds proposed to be issued, and said election shall be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act governing the election of directors: *Provided*, That no informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds—No."

Legislation. Sec. 3494-T2. Sec. 62 of Act of 1911, cited under § 3494-H

3494-U2. Bonds payable in series—Interest.

SEC. 330u2. If a majority of the votes cast is "Bonds—Yes," the board of directors shall immediately cause bonds in such amount to be issued payable in series as follows, to-wit:

At the expiration of eleven years, not less than five per cent. of the whole amount of said bonds; at the expiration of twelve years, not less than six per cent. of the whole amount of said bonds; at the expiration of thirteen years, not less than seven per cent. of the whole amount of said bonds; at the expiration of fourteen years, not less than eight per cent. of the whole amount of said bond; at the expiration of fifteen years, not less than nine per cent. of the whole amount of said bonds; at the expiration of sixteen years, not less than ten per cent. of the whole amount of said bonds; at the expiration of seventeen years, not less than eleven per cent. of the whole amount of said bonds; at the expiration of eighteen years, not less than thirteen per cent. of the whole amount of said bonds; at the expiration of nineteen years, not less than fifteen per cent. of the whole amount of said bonds; at the expiration of twenty years, a percentage sufficient to pay off the remainder of said bonds; that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount, and not for a percentage; that said bonds shall bear interest at the rate of not to exceed six per cent. per annum payable semi-annually on the first day of June and December of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected, and at such other place as the board of directors may designate in such bond.

Legislation. Sec. 3494-U2. Sec. 63 of Act of 1911, cited under § 3494-H.

3494-V2. Details as to bonds and coupons.

SEC. 330v2. Said bonds shall be of the denomination of one hundred dollars or five hundred dollars, negotiable in form, executed in the name of the district and signed by the president and secretary, and the seal of the district shall be affixed thereto. Said bonds shall be numbered consecutively, and bear date the day

of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. Said bonds shall express on their face that they are issued by the authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser.

Legislation. Sec. 3494-V2. Sec. 64 of Act of 1911, cited under § 3494-H.

3494-W2. Bonds under 20 years.

SEC. 330w2. Any drainage district may, by a majority vote of the legal electors of said district, provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof, in series as above provided.

Legislation. Sec. 3494-W2. Sec. 65 of Act of 1911, cited under § 3494-H.

3494-X2. Additional issue of bonds—Lien.

SEC. 330x2. When the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized, and it becomes necessary to raise additional money for such purposes, additional bonds may be issued, submitting the question, at special election, to the qualified voters of said district, otherwise complying with the provisions of this section in respect to an original issue of bonds. The lien for taxes, for the payment of the interest and principal of any bond issue, shall be a prior lien to that of any subsequent bond issue.

Legislation. Sec. 3494-X2. Sec. 66 of Act of 1911, cited under § 3494-H.

3494-Y2. Sale of bonds.

SEC. 330y2. The board of directors may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money to carry out the objects and purposes of this act. Before making any sale the board shall, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to

be given by publication thereof at least twenty days in a daily newspaper published in the city of Denver, and in any other newspaper, at discretion.

Legislation. Sec. 3494-Y2. Sec. 67 of Act of 1911, cited under § 3494-H.

3494-Z2. Sealed proposal for bonds.

SEC. 330z2. The notice shall state that sealed proposals will be received by the board of directors at the office of the drainage district, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five per cent. of the face value thereof.

Legislation. Sec. 3494-Z2. Sec. 68 of Act of 1911, cited under § 3494-H.

3494-A3. Annual assessment to pay bonds.

SEC. 330a3. Said bonds and the interest thereon shall be paid from an annual assessment upon the real property within the drainage district, and the real property within the district shall be and remain liable to be assessed for such payments as herein provided.

Legislation. Sec. 3494-A3. Sec. 69 of Act of 1911, cited under § 3494-H.

3494-B3. Right of way.

SEC. 330b3. The board of directors shall have the power to construct the said works across any water courses, street, avenue, highway, railway, canal or ditch which the route of such drainage system or any branch thereof may intersect or cross; and if any railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed, or the owner of land necessary for said drainage district, and the board of directors, can not agree upon the amount to be paid therefor, or the ^{limits} or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses, by the exercise of the right of

eminent domain, the right to the exercise of which is hereby conferred on drainage districts.

Legislation. Sec. 3494-B3. Sec. 70 of Act of 1911, cited under § 3494-H.

3494-C3. Right of way over state land.

SEC. 330c3. The right of way is hereby given, dedicated, and set apart, to locate, construct and maintain drainage systems and works, in, over, through, across or upon any of the lands which are now, or may be the property of the state.

Legislation. Sec. 3494-C3. Sec. 71 of Act of 1911, cited under § 3494-H.

3494-D3. Directors not to be interested in contracts.

SEC. 330d3. No director or officer of a district shall be interested directly or indirectly in any manner in any contract awarded or to be awarded by the board or in the profits thereof: nor shall receive any gratuity or bribe, and for any violation of this provision, such officer shall be deemed guilty of a felony, and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the penitentiary not exceeding five years or less than one year, and such conviction shall work a forfeiture of his office.

Legislation. Sec. 3494-D3. Sec. 72 of Act of 1911, cited under § 3494-H.

3494-E3. Property in certain water.

SEC. 330e3. Water gathered or developed by drainage systems or improvements shall be the property of the drainage district constructing said system or improvement.

Legislation. Sec. 3494-E3. Sec. 73 of Act of 1911, cited under § 3494-H.

3494-F3. Vacancies.

SEC. 330f3. In the event that a person elected as director of a drainage district shall fail or refuse to qualify within the time prescribed in this act, a vacancy shall exist and the board of county commissioners of the county where the office of the drainage district is located shall appoint a director who shall hold the office until the next regular district election, and upon filing

his oath and bond as in this act provided, the term of office of the director whose successor was to be elected shall end.

Legislation. Sec. 3494-F3. Sec. 74 of Act of 1911, cited under § 3494-H.

3494-G3. Judicial notice.

SEC. 330g3. In all actions, suits and judicial proceedings, in any court of this state, the court shall take judicial notice of the organization and existence of any drainage district of this state, hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in section 17 of this act; and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such drainage district, in regard to which any such order may hereafter be entered, and such certified copy thereof, so filed for record, and which thereafter has exercised or shall exercise the rights and powers of such a district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing drainage district within the meaning of this act; and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

Legislation. Sec. 3494-G3. Sec. 75 of Act of 1911, cited under § 3494-H.

3494-H3. Annexation of new acreage.

SEC. 330h3. Upon the petition of the owner thereof and the payment of a sum per acre equal to the aggregate of all assessments per acre theretofore made upon the lands comprising such district, the board of directors may authorize the inclusion of any

tract of land contiguous to the existing boundaries of said district and capable of being drained by said drainage system and thereupon said land shall become liable for all future assessments which may be levied for drainage purposes within said drainage district: and the costs of any such proceeding for the inclusion of land shall be borne by the applicant.

Legislation. Sec. 3494-H3. Sec. 76 of Act of 1911, cited under § 3494-H.

3494-J3. Judicial proceedings same as in case of irrigation districts.

SEC. 330j3. The board of directors of a drainage district organized under the provisions of this act may commence special proceedings in the district court of the county where the office of the drainage district is kept, in and by which the proceedings of said board of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, may be judicially examined, approved and confirmed, and the proceeding thereon shall be in conformity with the law regulating like proceedings for the examination, approval and confirmation of the organization and bonds of irrigation districts.

Legislation. Sec. 3494-J3. Sec. 77 of Act of 1911, cited under § 3494-H.

3494-K3. Voluntary contract for drainage district.

SEC. 330k3. Whenever the owners of lands which may require a combined system of drainage shall unanimously and mutually agree upon a system of drainage and the character of work necessary to be done to drain their lands and the amount of money each shall contribute towards said proposed works; they may reduce their agreement to writing specifying the boundary lines of said voluntary district and the lands therein, in 160 acre tracts, or smaller tracts if necessary, giving the names of the owners of each tract of land and specifying the work which they propose shall be done, and the name of the drainage district, and also naming three persons among their number who shall act as directors until the annual election, and may agree upon any other lawful

matter or thing which they may deem pertinent to the work proposed.

Legislation. Sec. 3494-K3. Sec. 78 of Act of 1911, cited under § 3494-H.

3494-L3. Approval of voluntary district by county commissioners.

SEC. 33013. They shall submit such agreement to the board of county commissioners of the county wherein the major part of the lands proposed to be included in such district may be situated, and shall submit therewith a plat of the land giving a general description of the same, and the said board of county commissioners as soon thereafter as may be practicable shall carefully consider all questions involved, and shall make a personal inspection of the land proposed to be included in said voluntary district or may employ some competent engineer or surveyor to examine and report to said board on the same and the expense of such surveyor or engineer, including any expense that the county commissioners may incur in the examination of such project shall be paid by the parties to such voluntary agreement, and the board of county commissioners may require a deposit to be made with the county treasurer of the county to protect the county against such expense. If such board of county commissioners shall become satisfied that the plan proposed is practicable and will be conducive to the public health, convenience, utility or welfare, and that the agreement submitted is fair and equitable in all respects considering the benefits which the respective lands will receive from such voluntary drainage system, then the board of county commissioners shall enter an order upon their records approving such agreement and shall file the same with the county clerk with the accompanying plat in the office of the county clerk of said county, and if such district extends into more than one county a certified copy of the agreement and plat, together with a certified copy of the said order of the board of county commissioners shall be filed by the parties to such agreement with the county clerk of such other county or counties, and thereupon the said drainage district shall be fully organized and established and shall have all the powers of drainage districts, and such directors so named in said agreement shall then possess all the powers and proceed in like manner as

before designated in the case of directors of districts organized by petition, and the agreement herein provided for shall constitute a charter of authority of such voluntary district and all lands subscribed to and voluntarily included in said district shall be considered as a unit or but one tract of land in the determination of any question or right or duty as between said voluntary district and any lands outside thereof, whether lying above or below said district or adjacent thereto.

Legislation. Sec. 3494-L3. Sec. 79 of Act of 1911, cited under § 3494-H.

3494-M3. Petition to dissolve.

SEC. 330m3. Whenever a majority of the owners of land within a drainage district representing also a majority of the whole number of acres of land within the district, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said drainage district a proposition to dissolve such district, it shall be the duty of such board of directors, upon proof that all claims and bills of the district of every kind or nature whatsoever have been fully paid and satisfied, to call an election for the purpose of submitting the question of the dissolution of such district to the qualified voters thereof and to cause a notice setting forth the object of such election, to be posted in the office of the district and in six public places within such district and to be published in some newspaper of general circulation and published in each county in which any portion of said district may lie, for a period of thirty days prior to said election, which said notice shall set forth the time and place for holding said election in each precinct within said district. It shall also be the duty of the board of directors to prepare ballots to be used at such elections on which shall be written or printed the words: "For dissolution" and "Against dissolution," and to appoint judges and clerks of elections as in other elections of the district. No district shall be dissolved which shall have claims, bills, bonds or indebtedness outstanding or unpaid and the attempted dissolution of such a district shall be null, void and of no force and effect.

Legislation. Sec. 3494-M3. Sec. 80 of Act of 1911, cited under § 3494-H.

3494-N3. Order of dissolution.

SEC. 330n3. The board of directors shall, upon the day specified in the notice of election as the day for the canvassing of the vote of such election, proceed to canvass the votes cast at said election and if it shall appear from such canvass that a majority of the ballots cast at said election were "For dissolution" then the board of directors shall forthwith make and enter in their records an order declaring said district to be duly dissolved and disorganized, which said order shall contain a complete copy of said petition for dissolution, including the signatures thereto attached, and a duly authenticated copy of the published notice of such election together with copies of the publisher's affidavit of publication, and shall state that an election was called and set for the.....day of.....A. D....., that on said day said election was held and that so many votes (stating the number) were cast for dissolution and so many votes were cast against dissolution, and said board of directors shall cause a copy of said order, duly certified by the president and attested by the secretary of the board of directors under the seal of the district, to be filed for record in the office of the county clerk and recorder of each county within which any portion of such district shall extend or lie and it shall be the duty of said county clerks and recorders to forthwith file and record said certified copies, whereupon said district shall be dissolved and shall cease to exist. Should it appear upon the canvass of said vote so cast at said election, that a majority of the votes were against dissolution, then the board of directors shall declare the proposition lost and shall thereupon enter an order to that effect in the records of the district, but shall not file such order with the county clerks and recorders of the counties into which such district shall extend.

Legislation. Sec. 3494-N3. Sec. 81 of Act of 1911, cited under § 3494-H.

3494-O3. Repeal with saving clause.

SEC. 330o3. That an act entitled "An act in relation to drainage districts," approved April 24, 1909, be and the same is hereby repealed, providing nothing herein contained shall invalidate

CITATIONS.

This and sec. 3433 invest the water commissioner with the powers of a constable; interference with his discharge of duties does not constitute contempt of court.—*Roberson v. Peo.*, 40 C. 124, 90 P. 81.

3498. Jurisdiction of justice of the peace.

SEC. 334. Justices of the peace shall have jurisdiction to hear, try and determine actions brought for violations of this act, subject to the right of appeal as provided for in case of assault and battery.

[For appeal in cases of assault and battery see section 3369.]

[For bribery of water commissioner see section 1723.]

[Penalty for failure to cover ditch, see section 3243.]

[Penalty for polluting stream, see section 1817.]

[Penalty for allowing water to waste, see section 3240.]

[Unlawful to cut trees which conserve the snow. Section 2626.]

Legislation. Sec. 3498. Act 1901 p. 19, § 2.

X. STATE CANALS AND RESERVOIRS AND THE CONTROL THEREOF.

Section.

- 3499. Penitentiary commissioners may locate and construct.
- 3500. State engineer shall survey, lay out and locate.
- 3501. Rights and powers given board.
- 3502. Title shall vest in state.
- 3503. Contract for and lease water rights.
- 3504. Aiding in the construction.
- 3505. Board of control of canal No. 1.
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- 3507. Use of water—Lease of lands.
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- 3510. Title to canal in state.
- 3511. Board constructs laterals.
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- 3513. State board of control have traveling expenses.
- 3514. Location of Mesa county state ditch.
- 3515. Property of the state.
- 3516. Board of penitentiary commissioners may issue and sell certificates.
- 3517. Construction of ditch.
- 3518. Right of way.

[*Only material sections of the original acts establishing ditches and reservoirs are printed. In many cases later appropriations have been made but in most instances the work has been abandoned.]

X. STATE CANALS AND RESERVOIRS AND THE CONTROL THEREOF.

Continued.

Section.

- 3519. Cash subscriptions, how used.
- 3520. Convicts returned to penitentiary, when.
- 3521. Contracts for transportation.
- 3522. Superintendent of construction—Salary.
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- 3524. Manager of ditch—Salary.
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- 3526. State engineer locate canal No. 3.
- 3527. Feeders for South Platte and Arkansas.
- 3528. Property of the state.
- 3529. Coal creek reservoir—Rights to water.
- 3530. Property of state—Delivery of water.
- 3531. Shall not impair vested rights.
- 3532. Damaging reservoir a misdemeanor.
- 3533. Reservoir—Apishapa creek.
- 3534. Location.
- 3535. Board of construction.
- 3536. Property of state.
- 3537. Sale and lease of water.
- 3538. Moneys paid to state treasurer.
- 3539. Reservoir Hardscrabble creek.
- 3540. Plans and specifications.
- 3541. Board of construction.
- 3542. Property of state—Disposition of water.
- 3543. Acquired rights not impaired.
- 3544. Maintenance and repair.
- 3545. Penalty for damaging reservoir.
- 3546. Reservoir—Saguache creek.
- 3547. Board of construction.
- 3548. Property of state—Disposition of water.
- 3549. Acquired rights not impaired.
- 3550. Penalty for damaging reservoir.
- 3551. Reservoir—Monument creek.
- 3552. Property of state—Disposition of water.
- 3553. Acquired rights not impaired.
- 3554. Penalty for damaging reservoir.
- 3555. Reservoir Chaffee county.
- 3556. Board of construction—Powers of board.
- 3557. Property of state—Management—Sale of water.
- 3558. Acquired rights not impaired.
- 3559. Penalty for damaging reservoir.
- 3560. Control of Boss Lake reservoir.
- 3561. Land board control ditches and reservoirs.
- 3562. County control of reservoirs.

3499. Penitentiary commissioners may locate and construct.

SEC. 335. That, for the purpose of reclaiming, by irrigation, state and other lands, and for the purpose of furnishing work for the convicts confined in the state penitentiary, the board of commissioners of the state penitentiary is hereby authorized to locate, acquire and construct, in the name of and for the use of the state of Colorado, ditches, canals, reservoirs and feeders, for irrigating and domestic purposes, and for that purpose may use convict labor of persons confined, or that may be confined, as convicts in the state penitentiary at Canon City.

Legislation. Sec. 3499. Act 1889 p. 285 § 1, entitled:

AN ACT

Empowering the Board of Penitentiary Commissioners to Construct Ditches, Canals, Reservoirs and Feeders with Convict Labor, and to Appropriate Water from the Arkansas River for Beneficial Purposes; to Issue Receipts or Certificates for Money Advanced; Make Rules and Regulations for the Sale of and Leasing Water, and Making An Appropriation Therefor.

CITATIONS.

This act referred to in considering the constitutionality of certificates of indebtedness for state canal No. 1.—*In re Canal Certificates*, 19 C. 64, 34 P. 274.

3500. State engineer shall survey, lay out and locate.

SEC. 336. The state engineer, under the direction of the board, shall survey, lay out and locate a ditch or canal upon the most feasible route on either side of the Arkansas river, which said ditch or canal shall be of sufficient capacity to cover at least thirty thousand acres of good arable land between Canon City and Pueblo; *Provided*. That work shall only be commenced and performed upon one main ditch, canal, reservoir or feeder at a time; that a second shall not be commenced until the completion of the first.

Legislation. Sec. 3500. Act 1889 § 2, cited under § 3499.

CITATIONS.

This act referred to in considering the constitutionality of certificates of indebtedness for state canal No. 1.—*In re Canal Certificates*, 19 C. 64, 34 P. 274.

3501. Rights and powers given board.

SEC. 337. The said board is hereby given all the rights and powers that an individual or corporation now has, or may hereafter have, under the laws of the state, or of the United States, to acquire the right of way over, upon and to any lands necessary for it to use or occupy in the construction and maintenance of said ditches, canals, reservoirs or feeders.

Legislation. Sec. 3501. Act 1889 § 3, cited under § 3499.

3502. Title shall vest in state.

SEC. 338. That the title to all ditches, canals, reservoirs or feeders, so constructed under this act, shall vest and remain in the state of Colorado, and the proceeds thereof shall be paid into the state treasury.

Legislation. Sec. 3502. Act 1889 § 4, cited under § 3499.

3503. Contract for and lease water rights.

SEC. 339. That when any part of any ditch, canal, reservoir or feeder shall be constructed under this act, said board of penitentiary commissioners may contract for and may lease water rights, upon such terms and under such rules and regulations as may be adopted by said board and approved by the governor of the state, to such individuals or corporations as may desire to lease the same.

[The act referred to above includes sections 3499-3504.]
[Is above section amended by sections 3561 and 3562?]

Legislation. Sec. 3503. Act 1889 § 5, cited under § 3499.

Sec. 3561 transfers control of canals and reservoirs to the state land board, and § 3562, a still later Act, turns over the control of the reservoirs, but not the state ditches, to the county commissioners.

3504. Aiding in the construction.

SEC. 340. That for the purpose of aiding in the construction of said ditches, canals, reservoirs and feeders, the said board is hereby authorized to receive subscriptions and advancements of money from persons owning land along the line of said proposed ditches, canals, reservoirs and feeders, or persons desiring the

construction of the same, and to issue receipts or certificates to such person or persons so advancing money for the amount thereof, which receipt or certificate shall draw interest at the rate of seven per cent. per annum, and both principal and interest shall be payable in water to be taken from said ditches, canals, reservoirs or feeders, under such rules and regulations as may be adopted by said board and the state engineer, and approved by the governor of the state.

Legislation. Sec. 3504. Act 1889 § 6, cited under § 3499.

3505. Board of control canal No. 1—Duties.

SEC. 341. There is hereby created a board to be known as "The board of control of state canal No. 1 and reservoirs connected therewith." The said board shall be composed of the lieutenant governor, who shall be chairman, the state engineer and the warden of the penitentiary. The secretary of the state board of land commissioners shall be secretary of said board of control. Said board is hereby charged with the duty of securing the early completion of state canal No. 1, and reservoirs connected therewith and of the operation and maintenance of the same as herein provided.

[Sections 2-7 of the above act have performed their function and are therefore not printed.]

Legislation. Sec. 3505. § 1 of Act 1893 p. 441, entitled:

AN ACT

Creating a Board of Control for the Completion and Construction of State Canal Number One and Reservoirs Connected Therewith, and Providing for the Construction, Completion, Operation and Maintenance of the Same.

State Canal No. 1 was constructed under authority of Act of 1889 p. 285, as recited in the title to Act of 1891 p. 335, making an appropriation for it. Act of 1894 p. 87 made a further appropriation.

CITATIONS.

The act of 1893 held partly constitutional and partly unconstitutional.—*In re Canal Certificates*. 19 C. 65, 34 P. 275.

3506. Board of land commissioners assume control.

SEC. 342. Upon completion of said canal and its acceptance

and approval, as hereinbefore provided, the said board of control of state canal No. 1 and reservoirs connected therewith, shall turn over the said canal, together with all drawings, specifications, reports and records pertaining to said canal and the action of said board of control, to the state board of land commissioners; whereupon the state board of land commissioners shall assume control of said canal and shall thereafter control, operate and maintain the same subject to such provisions of law as may hereafter be made and established.

[See also section 3561.]

Legislation. Sec. 3506. Act 1893 p. 445 § 8, cited under § 3505.

3507. Use of water—Lease of lands.

SEC. 343. It shall be the duty of the state board of land commissioners to cause the waters carried in the state canal No. 1 and reservoirs connected therewith to be applied to the irrigation of the state lands and all other lands lying under said canal at the earliest convenient and practicable times, and as a means among others to effect such use of water, the board of land commissioners are authorized to offer numerous portions of said lands for lease at such reasonable prices, and for such periods, not exceeding twenty years, as will be conducive to the rapid settlement of such lands and the early use of such waters.

Legislation. Sec. 3507. Act 1893 § 9, cited under § 3505.

3508. Rights and powers of board of control.

SEC. 344. The said board of control of state canal No. 1 and reservoirs connected therewith is here given all the rights and powers that an individual or corporation now has, or may hereafter have, under the laws of the state, or of the United States, to acquire the right of way over, upon and to any lands necessary for it to use or occupy in the construction and maintenance of such canal.

Legislation. Sec. 3508. Act 1893 § 10, cited under § 3505.

3509. Establish annual charges for carriage of water.

SEC. 345. It shall be the duty of the state board of land commissioners to establish from time to time reasonable annual charges for the carriage of waters or sell perpetual rights of water if deemed by it more expedient.

[Is the above section superseded by section 3562?]

Legislation. Sec. 3509. Act 1893 § 11, cited under § 3505.

Sec. 3562 referred to in the query of the official note refers to reservoirs only, not to ditches, and therefore seems not to affect the "carriage of waters."

Referring to the query of the official note, we suggest that the text is not superseded by § 3562.

3510. Title to canal in state.

SEC. 346. The title to the said canal shall vest and remain with the state of Colorado, and any money received for the carriage of water therein shall be devoted to the maintenance and operation of such canal, and surplus over and above the cost of operation, and maintaining such canal, shall be converted into the state treasury and applied by the state treasurer to meeting the certificates of indebtedness herein provided for and interest thereon.

Legislation. Sec. 3510. Act 1893 § 12, cited under § 3505.

3511. Board construct laterals.

SEC. 347. It shall be the duty of the said board of land commissioners to construct from time to time and as rapidly as may seem to such board advisable, lateral ditches and the necessary appurtenances thereto, for supplying the lands of the state lying under said canal with water for irrigation, and to see that all of such lands belonging to the state are brought under cultivation within a reasonable time.

Legislation. Sec. 3511. Act 1893 § 13, cited under § 3505.

3512. Certificates received in lieu of money for charges.

SEC. 348. Any receipts or certificates heretofore issued in return for subscriptions and advancement of money by persons owning land along the line of state canal No. 1, and reservoirs

connected therewith shall be received in lieu of money for the lawful and reasonable charges for the carriage of water in the said canal, and all of the certificates hereafter issued as in said canal or for perpetual water rights thereunder.

Legislation. Sec. 3512. Act 1893 § 14, cited under § 3505.

CITATIONS.

In so far as this act provided for the payment of lands purchased from the state by certificates of indebtedness issued for the construction of the canal it was unconstitutional.—*In re Canal Certificates*, 19 C. 64-70, 34 P. 274.

3513. State board of control have traveling expenses.

SEC. 349. The members of the state board of control of state canal No. 1, and reservoirs connected therewith shall be entitled to their reasonable traveling expenses while performing the duties herein laid upon them for which amounts the auditor shall draw warrants upon the state treasurer, when such amounts shall be duly certified to him by the secretary of the said board of control.

Legislation. Sec. 3513. Act 1893 § 15, cited under § 3505.

3514. Location of Mesa county state ditch.

SEC. 350. The state engineer under the direction of the board of penitentiary commissioners shall lay out, survey and locate a ditch or canal and laterals, reservoirs and feeders as may be necessary or expedient so as to cover all the land practicable in the Grand valley in Mesa county. The headgate of the said ditch or canal shall be located in the Hogback canon, and the water for said canal shall be taken out of the Grand river.

Legislation. Sec. 3514. Act 1891 p. 335 § 1, entitled:

AN ACT

Making An Appropriation to Continue the Construction of the State Canal No. 1, the Same Being Authorized by An Act Entitled "An Act Empowering the Board of Penitentiary Commissioners to Construct Ditches, Canals, Reservoirs and Feeders with Convict Labor, and to Appropriate Water from the Arkansas River for Beneficial Purposes, to Issue Receipts or Certificates for Money Advanced; Make Rules and Regulations for the Sale of and Leasing Water and Making an Appropriation Therefor," Approved April 19th, 1889.

3515. Property of the state.

SEC. 351. The said ditch shall be known as the Mesa county state ditch, and during the construction of the same and when constructed shall be the property of the state of Colorado and all revenues derived therefrom shall be turned into the state treasury.

Legislation. Sec. 3515. Act 1891 § 2, cited under § 3514.

3516. Board of penitentiary commissioners may issue and sell certificates.

SEC. 352. It shall be the duty of the board of penitentiary commissioners after said ditch is surveyed to issue and sell for cash certificates bearing seven per cent. interest from the date of the issuance thereof, the principal and interest of which shall be receivable by the state of Colorado as cash for water to be taken out of said canal under such rules and regulations as may be adopted by said board and state engineer and the governor of the state.

Legislation. Sec. 3516. Act 1891 § 3, cited under § 3514.

3517. Construction of ditch.

SEC. 353. That after the subscription of fifty thousand dollars for said certificates has been received by said board and twenty per cent. of the same has been paid in, it shall be the duty of said board to commence the construction of said ditch, and in order to construct the same the said board of penitentiary commissioners shall have the power and authority and it shall be their duty to select from the able-bodied convicts confined in the state penitentiary "As many as are not otherwise employed" none of whom shall be under life sentence, and transport the said convicts to a general headquarters for the construction of said ditch where said board shall make suitable provisions for the safe keeping of said convicts and said convicts shall be used under proper guard for the construction of said ditch.

Legislation. Sec. 3517. Act 1891 § 4, cited under § 3514.

3518. Right of way.

SEC. 354. The said board shall have the right and power to purchase, condemn or otherwise lawfully acquire a right of way for the said canal as provided in other cases and for said purpose may sue in the name of the people of the state of Colorado.

Legislation. Sec. 3518. Act 1891 § 5, cited under § 3514.

3519. Cash subscriptions, how used.

SEC. 355. Said board shall have the power to use all cash subscriptions for the purpose of purchasing provisions, tools, teams, etc., for the construction of said ditch or may receive at cash valuation groceries, vegetables, teams, tools, labor and other things necessary in constructing said ditch, on subscription for certificates as provided in section three of this act.

[Section 3 referred to is section 3516.]

Legislation. Sec. 3519. Act 1891 § 6, cited under § 3514.

3520. Convicts returned to penitentiary, when.

SEC. 356. Five days before the expiration of the term of confinement of any convict or convicts employed in the construction of said ditch shall expire, he or they shall be transported to the penitentiary at Canon City and others shall be taken to said work in his or their places.

Legislation. Sec. 3520. Act 1891 § 7, cited under § 3514.

3521. Contracts for transportation.

SEC. 357. Said board of penitentiary commissioners shall have the power and authority to obtain or make a contract with any railroad company for rates for transporting prisoners to and from said work; or for transporting material, goods, wares or merchandise to be used in the construction of said ditch; and in advertising for bids for general penitentiary provisions and supplies, as now provided by law, may stipulate that such proportion of said provisions and supplies as may be necessary for the sustenance of convicts employed in the construction of said Mesa

county state ditch shall be delivered at the general headquarters of said ditch.

Legislation. Sec. 3521. Act 1891 § 8, cited under § 3514.

3522. Superintendent of construction—Salary.

SEC. 358. Said board may select one of their number who shall have immediate charge of the construction of said ditch and shall give his personal attention to the same and when so selected the said member of said board shall receive in addition to the present compensation two thousand, five hundred (2,500) dollars per year, payable out of the funds derived from the sale of certificates as provided in section three of this act.

Legislation. Sec. 3522. Act 1891 § 9, cited under § 3514.

3523. Deputy warden in charge of convicts.

SEC. 359. The warden of said penitentiary may appoint a deputy warden who shall have the same power and authority as he now possesses who shall be placed in charge of the convicts employed in the construction of said canal.

Legislation. Sec. 3523. Act 1891 § 10, cited under § 3514.

3524. Manager of ditch—Salary.

SEC. 360. After said canal is fully completed said convicts shall be returned to the penitentiary at Canon City and the governor shall appoint with the advice and consent of the senate a competent person who shall manage and superintend said ditch for and on behalf of the state and who shall receive fifteen hundred dollars per year salary to be paid out of the income from said ditch upon the order of board of penitentiary commissioners.

Legislation. Sec. 3524. Act 1891 § 11, cited under § 3514.

3525. Lease of water rights.

SEC. 361. When said ditch or any of its reservoirs or feeders shall be constructed under this act said board of penitentiary

commissioners may contract for the carriage and delivery of water, and may lease water rights upon such terms and under such rules and regulations as may be adopted by said board and approved by the governor of the state to such individuals or corporations as may desire to lease the same.

Legislation. Sec. 3525. Act 1891 § 12, cited under § 3514.

3526. State engineer locate canal number three.

SEC. 362. The state engineer, under the direction of said board of control, shall survey, locate and lay out a tunnel or canal which shall be known as "State Canal No. 3," commencing at the most feasible point on the Gunnison river below the mouth of the Cimarron river; thence in a westerly direction to the Uncompahgre river valley, thence with laterals running in various directions from said main canal to cover and redeem the greatest body of arable land in said counties of Montrose and Delta.

[Canal No. 3 established by the act of 1901 was ceded to the United States by section 6928.]

Legislation. Sec. 3526. Act 1901 p. 369 § 2, entitled:

AN ACT

To Construct, Maintain and Operate State Canal Number Three, in Montrose and Delta Counties; the Creation of a Board of Control; the Use of Convict Labor in Constructing the Same; the Issuance of Certificates of Indebtedness; Providing for the Sale of Water; and Making An Appropriation for Construction.

3527. Feeders for South Platte and Arkansas.

SEC. 363. That there is hereby appropriated out of any funds in the state treasury belonging to the internal improvement fund not otherwise appropriated the sum of three thousand dollars, or so much thereof as is necessary to defray the necessary expenses of a preliminary survey and investigation of the sources of the Grand, Laramie and North Platte river systems, with reference to turning the unappropriated waters thereof eastward, and causing them to flow into and through the tributaries of the South Platte and Arkansas river systems for the purpose of irrigation and other beneficial uses.

Legislation. Sec. 3527 Act 1889 p. 208 § 1, entitled:

AN ACT

To Provide for the Diversion of the Unappropriated Waters at or near the Source of the Grand, Laramie and North Platte River Systems and Their Tributaries, and to Cause Said Waters to Flow Eastward Through Passes, Canons and Breaks in the Continental Divide into and Through the Tributaries of the South Platte and Arkansas River Systems for the Purpose of Irrigation and Other Beneficial Uses; to Regulate the Distribution and Disposition of Said Waters, When Diverted, in Accordance with the Rights of Appropriation Thereof; to Appoint a Commission to Carry Out Such Work, and to appropriate Money for Preliminary Expenses, and to Construct the Necessary Dams, Canals and Water Works to Effect Such Diversion of Water, and for Salaries and Expenses Incident Thereto.

3528. Property of the state.

SEC. 364. That the said ditches, canals and waterworks, and the waters when so diverted, shall be the property of the state, and the waters so supplied shall be turned into the said South Platte and Arkansas rivers and their tributaries for the purpose of supplying deficiencies of water for appropriations heretofore made or hereafter to be made in the order of such appropriation by the several canals and reservoirs taken from said streams. The state engineer, or in his stead such person or persons as may be duly appointed for that purpose according to law, shall determine, regulate and provide for the delivery of such waters to such ditches, canals and reservoirs, according to their several appropriations, decrees of court, capacities and necessities.

[Survey in Boulder county. L. '89, p. 46.]

[Survey near Walsenburg, L. '07, p. 134.]

Legislation. Sec. 3528. Act 1889 p. 210 § 4, cited under § 3527.

3529. Coal Creek reservoir—Rights of water.

SEC. 365. There is hereby appropriated out of any money in the state treasury belonging to the internal improvement permanent fund, and any money which may hereafter be credited to said fund and not otherwise appropriated, the sum of twenty thousand (20,000) dollars, or as much thereof as may be necessary, as is hereinafter provided, for the construction of a reservoir at Coal creek, upon or adjacent to sections twenty, twenty-

eight, or thirty-four, township four south, range sixty-five west, in the county of Arapahoe, to store the water of floods for the purpose of irrigation and other beneficial uses; *Provided*, That no part of said appropriation shall be used for the purchase of land, and that the said reservoir shall not be constructed except upon lands the title to which shall first be re-vested in the state; *And, provided, further*, That all citizens of the state shall have free and equal rights to the use and benefits of said reservoir when constructed, subject only to such reasonable rules and restrictions as may be provided by law for the protection of the property.

Legislation. Sec. 3529. Act 1889 p. 215 § 1, entitled:

AN ACT

To Provide for the Construct'ion of a Reservoir at the Head of Coal Creek, Upon or Adjacent to Sections Twenty, Twenty-eight, or Thirty-four, Township Four, South, Range Sixty-five West, in the County of Arapahoe; to Appropriate Money for the Payment of the Same, and to Provide for the Regulation of the Flow of Water Therefrom.

3530. Property of state—Delivery of water.

SEC. 366. That the said reservoir and waterworks, and the waters when so collected and stored, shall be the property of the state; and the water so supplied shall be turned into Coal creek or canal, for the purpose of supplying water for appropriations heretofore made, or hereafter to be made, in the order of such appropriation, by the several canals and reservoirs taken from said stream. The state engineer, or in his stead such person or persons as may be duly appointed for that purpose according to law, shall determine, regulate and provide for the delivery of such water to such ditches, canals and reservoirs, according to their several appropriations, decrees of court, capacities and necessities.

Legislation. Sec. 3530. Act 1889 § 6, cited under § 3529.

3531. Shall not impair vested rights.

SEC. 367. Nothing in this act shall be construed so as to impair any rights acquired, or that may be acquired, under or by virtue of the irrigation laws of the state of Colorado.

Legislation. Sec. 3531. Act 1889 § 7, cited under § 3529.

3532. Damaging reservoir a misdemeanor.

SEC. 368. Any person interfering with or damaging said reservoir or any of its approaches or appurtenances, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not exceeding one thousand (1,000) dollars, or by imprisonment in the county jail not exceeding one year.

Legislation. Sec. 3532. Act 1889 § 8, cited under § 3529.

3533. Reservoir—Apishapa creek.

SEC. 369. That there is hereby appropriated out of any moneys in the state treasury belonging to the internal improvement permanent fund and any moneys which may be hereafter credited to said fund not otherwise appropriated the sum of fifteen thousand (15,000) dollars for the construction of a reservoir on the Apishapa creek in the county of Las Animas, for the storage of the surplus waters of said creek, to pay for surveying the same.

Legislation. Sec. 3533. Act 1891 p. 345 § 1, entitled:

AN ACT

In Relation to a Public Reservoir on the Apishapa Creek, in the County of Las Animas and State of Colorado, and for Other Purposes.

3534. Location.

SEC. 370. Said reservoir shall be erected at some suitable place, to be determined by the state engineer, west of the Denver and Rio Grande railway, on or near the Apishapa creek.

Legislation. Sec. 3534. Act 1891 § 2, cited under § 3533.

3535. Board of construction.

SEC. 371. The governor, secretary of state and state engineer are hereby constituted a board, under whose supervision and control said reservoir shall be located and constructed. Said board shall take charge of said reservoir, until otherwise provided by law, and make all proper regulations for the sale or disposal of the waters stored therein.

Legislation. Sec. 3535. Act 1891 § 3, cited under § 3533.

3536. Property of state.

SEC. 372. Said reservoir shall be the property of the state, and all lands covered by said reservoir, or required for the use of ditches shall be vested in the state of Colorado, prior to the letting of contracts for construction of such reservoir or ditches.

Legislation. Sec. 3536. Act 1891 § 4, cited under § 3533.

3537. Sale and lease of waters.

SEC. 373. Upon the completion of said reservoir the board appointed in section 3 of this act shall take such steps as shall be necessary to sell or lease such waters as will in the judgment of said board bring in the most revenue to the state.

[Section 3 referred to is section 3535.]

Legislation. Sec. 3537. Act 1891 § 7, cited under § 3533.

3538. Moneys paid to state treasurer.

SEC. 374. All moneys received from the sale or leasing of the water stored in said reservoir and from any water rights sold, either in connection with lands belonging to the state or otherwise, shall be paid to the state treasurer and by him credited to the internal improvement permanent fund.

Legislation. Sec. 3538. Act 1891 § 8, cited under § 3533.

3539. Reservoir—Hardscrabble creek.

SEC. 375. There is hereby appropriated out of any money in the state treasury belonging to the internal improvement permanent fund, and any money which may hereafter be credited to said fund and not otherwise appropriated the sum of ten thousand (10,000) dollars, or as much thereof, as may be necessary, as hereinafter provided for the construction of a reservoir, or reservoirs, at the most convenient and suitable place, or places to be selected by the state engineer in township 21 range 69 west in the county of Custer, to store the waters of the Hardscrabble creek, and its tributaries for the purpose of irrigation, and other beneficial uses.

Legislation. Sec. 3539. Act 1891 p. 350 § 1, entitled:

AN ACT

To Provide for the Construction of a Reservoir or Reservoirs at the Most Convenient and Suitable Place or Places to be Selected by the State Engineer in Township Twenty-one (21) Range Sixty-nine (69) West in the County of Custer. To appropriate Money for the Payment of the Same and to Provide for the Regulation of the Flow of Water Therefrom and to Maintain the Expenses Thereof.

3540. Plans and specifications.

SEC. 376. As soon as practicable after the passage and approval of this act, the state engineer shall make the necessary arrangements for measuring the flow of water in said Hardscrabble creek with a view of constructing a reservoir or reservoirs of sufficient capacity to hold a part or a sufficient quantity of the waters of Hardscrabble creek, and its tributaries above said reservoir or reservoirs. Said state engineer, shall thereafter calculate and determine the required capacity of such reservoir, or reservoirs, to store the waters flowing in said creek or so much thereof as may be necessary during the months of April, May, and June of each year, and prepare plans and specifications thereof.

Legislation. Sec. 3540. Act 1891 § 2, cited under § 3539.

3541. Board of construction.

SEC. 377. The governor, state engineer, and attorney general shall be, and hereby are constituted a board for the purpose of constructing said reservoir, or reservoirs, and taking charge of same until otherwise provided by law.

Legislation. Sec. 3541. Act 1891 § 3, cited under § 3539.

3542. Property of state—Disposition of water.

SEC. 378. That the said reservoir, or reservoirs, and water-works and the waters when so collected, and stored shall be the property of the state, and the water so supplied shall be turned into Hardscrabble creek or canals for the purpose of supplying water for appropriations heretofore made or hereafter to be made in the order of such appropriation by the several canals and reser-

as taken from said stream. The state engineer, or in his stead
 h person, or persons as may be duly appointed for that purpose
 according to law, shall determine, regulate and provide for the
 delivery of such water to such ditches, canals and reservoirs accord-
 ing to their several appropriations, decrees of court, capacities and
 necessities.

Legislation. Sec. 3542. Act 1891 § 6, cited under § 3539.

3543. Acquired rights not impaired.

SEC. 379. Nothing in this act shall be construed so as to
 impair any rights acquired, or that may be acquired under, or by
 virtue of the irrigation laws of the state of Colorado.

Legislation. Sec. 3543. Act 1891 § 7, cited under § 3539.

3544. Maintenance and repair.

SEC. 380. When said reservoir or reservoirs, are completed,
 together with the approaches, the expense of maintaining and
 keeping them in repair shall be by persons using and having a
 direct benefit from the use of the water therefrom and persons
 to whom a greater supply of water is received by the storage of
 water in the aforesaid reservoir or reservoirs.

[Is above section superseded by section 3562?]

Legislation. Sec. 3544. Act 1891 § 8, cited under § 3539.

In answer to the above query we suggest that the title to the Act
 from which this section is taken is confined to a reservoir in Custer
 county while § 3562 is general to the state and can not affect rights which
 had already vested in the Custer county reservoir.

The terms of § 3562, cited in the official note would seem to super-
 sede this section.

3545. Penalty for damaging reservoir.

SEC. 381. Any person interfering with or damaging said
 reservoir or reservoirs, or parts, or appurtenances thereof, shall be
 deemed guilty of a misdemeanor and upon conviction thereof shall
 be fined not exceeding one thousand (1,000) dollars or by im-
 prisonment in the county jail not exceeding one year.

Legislation. Sec. 3545. Act 1891 § 9, cited under § 3539.

3546. Reservoir—Saguache creek.

SEC. 382. There is hereby appropriated out of any money in the state treasury belonging to the internal improvement income fund, and any money which may hereafter be credited to said fund, and not otherwise appropriated, the sum of thirty thousand dollars or so much thereof as may be necessary, for the construction of one or more reservoirs, as is hereinafter provided, on or near the head-waters of Saguache creek, in Saguache county, Colorado, at some suitable point or points within or near township forty-three (43) north of range two (2) east N. M. P. M., or township forty-three (43) north of range three (3) east N. M. P. M. or both to be used for the conservative, storage and distribution of flood waters and waters flowing in said creek for the irrigation of lands which are or hereafter can be irrigated by water taken from said Saguache creek; *Provided*, That no part of said appropriation shall be used for the purchase of land.

Legislation. Sec. 3546. Act 1891 p. 354 § 1, entitled:

AN ACT

To Provide for the Construction of One or More Reservoirs on or near the Head-waters of Saguache Creek in Saguache County, Colorado, to Appropriate Money for the Payment of the Same, and to Provide for the Regulation of the Flow of Water Therefrom, and to Provide a Penalty for Interfering With or Damaging Such Reservoirs.

3547. Board of construction.

SEC. 383. The governor, state engineer and chairman of the board of county commissioners of Saguache county shall be and hereby are constituted a board for the purpose of constructing said reservoir or reservoirs, and shall have power if after the examination and measurements made by the state engineer, as hereinafter provided, they shall conclude that two reservoirs could be constructed with the money hereby appropriated, and that they would more efficiently than one subserve the objects hereby sought to be accomplished, to cause said two reservoirs to be constructed; *Provided*, That the total cost of said two reservoirs shall not exceed the sum of thirty thousand dollars hereby appropriated; *And, provided, further*, That if after proper examination and survey

the board shall determine that it is not practicable and feasible to construct any reservoir at the place herein designated, or that the same cannot be properly constructed with the sum appropriated by this act, together with such private donations and subscriptions as may be tendered to the board, then no portion of said appropriation shall be expended except so much as may have been necessary to defray the expenses of such examination and survey as may have been required by this act or ordered by the board.

Legislation. Sec. 3547. Act 1891 § 2, cited under § 3546.

3548. Property of state—Disposition of waters.

SEC. 384. The said reservoir or reservoirs when so constructed, and the waters therein when so collected and stored, shall be the property of the state, and until otherwise provided by law shall be under the charge, management and control of the said board of construction, and the said waters shall under such rules and regulations as the board may prescribe, be sold or leased, and all moneys received from such sale or lease, whether the same be sold along with state or school land or otherwise, shall be turned in to the state treasurer and by him credited to the internal improvement income fund.

Legislation. Sec. 3548. Act 1891 § 6, cited under § 3546.

3549. Acquired rights not impaired.

SEC. 385. Nothing in this act shall be construed so as to impair any rights acquired or that may be acquired under or by virtue of the laws of Colorado.

Legislation. Sec. 3549. Act 1891 § 7, cited under § 3546.

3550. Penalty for damaging reservoir.

SEC. 386. Any person wilfully damaging any reservoir constructed under the provisions of this act, or any of its approaches or appurtenances shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail for a

term not exceeding one year or by both such fine and imprisonment.

Legislation. Sec. 3550. Act 1891 § 8, cited under § 3546.

3551. Reservoir—Monument creek.

SEC. 387. There is hereby appropriated out of any money in the state treasury belonging to the internal improvement permanent fund, and any money which may hereafter be credited to said fund and not otherwise appropriated, the sum of thirty thousand (30,000) dollars, or as much thereof as may be necessary, as is hereinafter provided, for the construction of a reservoir at Monument creek, upon or adjacent to sections fifteen and twenty-two, township eleven, range sixty-seven west, in the county of El Paso, to store the water of floods for the purpose of irrigation and other beneficial uses; *Provided*, That no part of said appropriation shall be used for the purchase of land, and that the said reservoir shall not be constructed except upon lands the title to which shall first be vested in the state; *And provided, further*. That all citizens of the state shall have equal rights to the use and benefits of said reservoir when constructed, subject only to such reasonable rules and restrictions as may be provided by law.

Legislation. Sec. 3551. Act 1891 p. 352 § 1, entitled:

AN ACT

To Provide for the Construction of a Reservoir Near the Head of Monument Creek, Upon or Adjacent to Sections Fifteen and Twenty-two, Township Eleven, Range Sixty-seven West in the County of El Paso; to Appropriate Money for the Payment of the Same, and to Provide for the Regulation of the Flow of Water Therefrom; and to Provide a Penalty for Interfering With or Damaging Such Reservoir.

3552. Property of state—Disposition of water.

SEC. 388. That the said reservoir and the waters when so collected and stored, shall be the property of the state; and the water so supplied shall be disposed of by sale to those desiring the same, the rates per cubic foot per second of time therefor to be fixed by the said board, the payments thereof to be made to said board payable annually in advance on or before May 1st, of each year. The income derived from the sale of such water to be paid

into the state treasury and placed to the credit of the internal improvement permanent fund.

Legislation. Sec. 3552. Act 1891 § 6, cited under § 3551.

3553. Acquired rights not impaired.

SEC. 389. Nothing in this act shall be construed so as to impair any rights acquired, or that may be acquired, under the virtue of the irrigation laws of the state of Colorado.

Legislation. Sec. 3553. Act 1901 § 7, cited under § 3551.

3554. Penalty for interfering with or damaging reservoir.

SEC. 390. Any person interfering with or damaging said reservoir or any of its approaches or appurtenances, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one thousand (1,000) dollars or by imprisonment in the county jail not exceeding one year.

Legislation. Sec. 3554. Act 1891 § 8, cited under § 3551.

3555. Reservoir—Chaffee county.

SEC. 391. There is hereby appropriated out of any money in the state treasury belonging to the internal improvement income fund, and any money which may hereafter be credited to said fund, and not otherwise appropriated, the sum of fifteen thousand dollars, or so much thereof as may be necessary for the construction of one or more reservoirs, to be used for the conservation, storage and distribution of flood waters (and waters flowing in said creeks) and for the purpose of supplying the deficiency existing at certain seasons of the year, in the supply of water flowing in the Cottonwood creek, Chalk creek, and the South Arkansas river, Chaffee county, Colorado, for the irrigation of lands which are or hereafter can be irrigated by waters taken from said creeks; *Provided*, That no part of said appropriation shall be used for the purchase of land.

Legislation. Sec. 3555. Act 1891 p. 347 § 1, entitled:

AN ACT

To Provide for the Construction of Reservoirs, and the Storage and Sup-

ply of Water to Supplement the Supply at Certain Seasons in the Flow of Certain Natural Streams of the State, in Chaffee County, and to Provide Penalties for Damaging the Same and Providing an Appropriation Therefor.

3556. Board of construction—Powers of board.

SEC. 392. The governor, state engineer and chairman of the board of county commissioners shall be and hereby are constituted a board for the purpose of constructing said reservoir or reservoirs, and shall have power if, after the examination and measurements made by the state engineer as hereinafter provided, they shall conclude that two reservoirs could be constructed with the money hereby appropriated, and that they would more efficiently than one subserve the purposes hereby sought to be accomplished, to cause said two reservoirs to be constructed; *Provided*, That the total cost of said two reservoirs shall not exceed the sum of fifteen thousand dollars hereby appropriated; *And, provided, further*. That, if after proper examination and survey, the board shall determine that it is not practicable and feasible to construct any reservoir at the place herein designated, or that the same cannot be properly constructed with the sum appropriated by this act, together with such private donations and subscriptions as may be tendered to the board, or in the opinion of said board the expenditure of the sum herein appropriated in the construction of said reservoir or reservoirs shall not be deemed expedient, and for the best interest of the whole people of the state of Colorado, then no portion of said appropriation shall be expended except so much as may have been necessary to defray the expenses of such examination and survey as may have been required by this act or ordered by the board.

Legislation. Sec. 3556. Act 1891 § 3, cited under § 3555.

3557. Property of state—Management—Sale of waters.

SEC. 393. The said reservoir or reservoirs, when so constructed, and the waters therein, when so collected and stored, shall be the property of the state, and all lands on which shall be constructed said reservoir or reservoirs or the works connected therewith, shall first be vested in the state of Colorado, and until

otherwise provided by law shall be under the charge, management and control of the said board of construction, and the said waters shall, under such rules and regulations as the board may prescribe, and shall be sold or leased by said board as said board may deem best, and all moneys received from the sale or lease of said water, whether the same shall be sold along with lands belonging to the state, or otherwise, shall be turned into the state treasurer, and by him credited to the internal improvement income fund.

Legislation. Sec. 3557. Act 1891 § 7, cited under § 3555.

3558. Acquired rights not impaired.

SEC. 394. Nothing in this act shall be construed so as to impair any rights acquired, or that may be acquired, under or by virtue of the laws of Colorado.

Legislation. Sec. 3558. Act 1891 § 8, cited under § 3555.

3559. Penalty for damaging reservoir.

SEC. 395. Any person wilfully damaging any reservoir constructed under the provisions of this act, or any of its approaches or appurtenances, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

Legislation. Sec. 3559. Act 1891 § 9, cited under § 3555.

3560. Control of Boss lake reservoir.

SEC. 396. The board of county commissioners of Chaffee county shall have charge and control of that certain state reservoir situated in said county and commonly known as the Boss lake reservoir and shall, without expense to the state of Colorado, maintain and keep said reservoir in good condition and provide for the storage of water as contemplated in the act providing for the construction of said reservoir and also for the distribution of said water under the direction of the water commissioner for the district in which said reservoir is situated, at such times as the

scarcity of water in the stream known as the South Arkansas demands that the waters in said stream should be replenished for the purpose of irrigating the lands under ditches now, or hereafter to be constructed; *Provided*, That said waters shall be distributed by the said water commissioner pro rata without reference to the dates of priorities of water rights and without expense to the consumers thereof; *Provided, further*, That the county of Chaffee assumes and shall be held responsible for any damages resulting from breakage of the dam or water discharges therefrom.

Legislation. Sec. 3560. Act 1897 p. 119 § 1, entitled:

AN ACT

To Provide for the Distribution of the Waters Stored or to be Stored in the Reservoir Known as the "Boss Lake Reservoir" Situated in Chaffee County, Colorado.

3561. Land board control ditches and reservoirs.

SEC. 397. Until otherwise authorized by law, the board of land commissioners is hereby directed to regulate the distribution of water from state canals and reservoirs under such rules and regulations as said board shall deem to be for the best interests of the state. "And to charge and collect rental for the carriage of water therein."

[Is this section superseded by section 3562?]

[See sections 3506 and 3509.]

Legislation. Sec. 3561. Act 1893 p. 404 § 1, entitled:

AN ACT

To Direct the State Board of Land Commissioners to Regulate the Distribution of Water from State Canals and Reservoirs.

The following section seems to transfer the control of state reservoirs to the county commissioners. See note to § 3503.

3562. County control of reservoirs.

SEC. 398. The board of county commissioners of any county wherein is situated any state reservoir, shall have charge and control of such reservoir and shall, without expense to the state of Colorado, maintain and keep said reservoir in good condition and provide for the storage of water as contemplated in the act provid-

ing for the construction of said reservoir, and also for the distribution of said water under the direction of the water commissioner for the district in which said reservoir is situated, at such times as the scarcity of water in the stream which such reservoir is intended to reinforce demands that the water in said stream should be replenished for the purpose of irrigating the lands under ditches now or hereafter to be constructed; *Provided*, That said waters shall be distributed by said water commissioner pro rata without reference to priority of water rights and without expense to consumers thereof; *And, provided, also*, That the counties in which said reservoirs are situated assume and shall be held responsible for any damages resulting from breakage of the dams or water discharges therefrom; *And, provided, further*, That the provisions of this act shall not apply to any state reservoir constructed primarily for the purpose of irrigating state lands, but any such reservoir shall remain in the control of the state board of land commissioners.

Legislation. Sec. 3562. Act 1899 p. 350 § 1, entitled:

AN ACT

To Provide for the Leasing and Distributing of the Waters Stored or to be Stored in State Reservoirs.

See notes to Secs. 3503, 3509, 3544, 3561.

CHAPTER LXXIII.

ITINERANT VENDORS AND COMMISSION MERCHANTS.

- I. ITINERANT VENDORS.—3563-3578.
 - II. COMMISSION MERCHANTS.—3579-3582.
 - III. TRANSIENT DEALERS.—3582-A.-3582-N.
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I. ITINERANT VENDORS.

Section.

- 3563. Itinerant vendor defined.
 - 3564. When act shall not apply.
 - 3565. License must be obtained.
 - 3566. License—Oath of applicant.
 - 3567. License fees.
 - 3568. Application made in writing—Term of license.
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 - 3570. Application of fees.
 - 3571. Licensee post name and number.
 - 3572. License void on violation of act.
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 - 3574. Selling goods without license—Making false application—Penalty.
 - 3575. Action to recover license fee—Attachment of goods.
 - 3576. False oath deemed perjury.
 - 3577. Fraud in sale of goods—Penalty.
 - 3578. Jurisdiction of courts.
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3563. Itinerant vendor defined.

SECTION 1. The term, "Itinerant Vendor," for the purposes of this act shall mean and include any person, either principal or agent, who engages in either a temporary or transient business in this state, either in one locality or in traveling about the country or from place to place, selling manufactured goods, wares or mer-

chandise, and it shall include peddlers and hawkers and also those who for the purpose of carrying on their temporary or transient business hire, lease or occupy a building, structure, tent, car, boat, vehicle, storeroom or place of any kind for the exhibition and sale of any manufactured goods, wares or merchandise.

Legislation. Sec. 3563. Act 1905 p. 274 § 1, entitled:

AN ACT

To Prevent and Punish Fraud in Sales of Manufactured Goods, Wares and Merchandise by "Itinerant Vendors," and to Regulate Such Sales.

This Act supersedes § 3985 as to peddler's license. In towns and cities the matter was relegated to municipal ordinance by § 6525. § 13.

CITATIONS.

Under this act while the district court would have jurisdiction it could not acquire jurisdiction by the transfer by consent of a proceeding pending on appeal in the county court.—*Morse v. Peo.*, 43 C. 119, 95 P. 286.

This act held unconstitutional as to particular cases.—*Leonard v. Reed*, 46 C. 308, 104 P. 410. *Eaton v. Peo.*, 46 C. 361, 104 P. 407. *Smith v. Farr*, 46 C. 365, 104 P. 404.

This act does not affect a merchant carrying on business in this state but who sells his merchandise through traveling salesmen.—*Eaton v. Peo.*, 46 C. 361, 104, P. 407.

A statute which imposes a license tax upon those transiently or temporarily engaged in the sale of merchandise to the consumer while exempting those who sell like goods to the merchant is a wrongful discrimination.—*Smith v. Farr*, 46 C. 377-380, 104, P. 401.

No opinion expressed on the validity of this act with respect to peddlers and hawkers as defined by lexicographers.—*Id.* 381.

This act which assumes to impose a license tax upon those engaged in inter-state commerce is a violation of the federal constitution.—*Wilcox v. Peo.*, 46 C. 382, 104 P. 409.

3564. When act shall not apply.

SEC. 2. The provisions of this act shall not apply to commercial travelers or agents selling to merchants in the usual course of business, and they shall not apply to the sale of goods, wares, or merchandise in original packages from other states as permitted

by the laws of the United States applicable to interstate commerce between the states; *And, provided, further,* That the provisions of this act shall not apply to the sale of books, papers or school supplies, garden truck or farm produce.

Legislation. Sec. 3564. Act 1905 § 2, cited under § 3562.

3565. License must be obtained.

SEC. 3. Except as permitted by the preceding section of this act, it shall not be lawful for any person to be engaged in any manner in the business of an "Itinerant Vendor," as defined by section 1, of this act, unless such person shall be duly licensed so to do under the provisions of this act.

[Section 1 referred to is section 3563.]

Legislation. Sec. 3565. Act 1905 § 3, cited under § 3562.

3566. License—Oath of applicant.

SEC. 4. The county clerk and recorder shall grant a county license to any person making due application therefor to engage in the business of an "Itinerant Vendor" who shall first file in the office of the county clerk and recorder a written certificate signed by any judge or a court of record in this state or by the majority of the members of the board of county commissioners of the county in this state in which the applicant resides, stating that to the best knowledge, information and belief of the judge or commissioners making the certificate the applicant for a license therein named is of good repute for morals and integrity, and that he is or has legally declared his intention to become a citizen of the United States. Such judge of a court of record or the county commissioners, before making any such certificate, shall require the applicant to make oath that he is the person named therein; that he then is a citizen of the United States, or that he has legally declared his intention to become such a citizen; that in the business of an "Itinerant Vendor" he will comply with the laws of the United States and the laws of the state of Colorado, and that in his business as an "Itinerant Vendor," he will not commit any fraud, sell any manufactured goods, wares or merchandise by any false or short weight or measure, or sell any goods,

wares or merchandise as being composed or manufactured in whole or part of material or ingredients different from which such manufactured goods, wares or merchandise are actually composed or manufactured, or sell any manufactured goods, wares or merchandise which are partly or entirely of a poisonous character or nature, for the consumption of human beings, animals or fowls, or for application to the body, hair or skin of any human being or animal, and such oath shall be certified in writing upon the certificate by an officer duly authorized to administer oaths.

Legislation. Sec. 3566. Act 1905 § 4, cited under § 3562.

3567. License fees.

SEC. 5. Every "Itinerant Vendor," before making any sale of manufactured goods, wares or merchandise in any county in this state shall procure a license from the county clerk and recorder of that county and pay the following named fees therefor, viz.:

For each "Itinerant Vendor" traveling on foot, five dollars.

For each "Itinerant Vendor" traveling on a bicycle or tricycle, fifty dollars.

For each "Itinerant Vendor" traveling by carriage or other vehicle drawn by one horse or other animal, one hundred dollars.

For each "Itinerant Vendor" traveling by carriage or other vehicle drawn by two or more horses or other animals, one hundred and fifty dollars.

For each "Itinerant Vendor" traveling by automobile or other self-propelling vehicle or carriage, two hundred dollars.

For each "Itinerant Vendor" traveling in any other manner than hereinbefore described, two hundred and fifty dollars.

For each "Itinerant Vendor" doing business in any building, structure, tent, car, boat, stationary vehicle, storeroom or certain place of any kind for the exhibition and sale of any manufactured goods, wares or merchandise for each such building, structure, tent, car, boat, stationary vehicle, storeroom or place, two hundred

Legislation. Sec. 3567. Act 1905 § 5, cited under § 3562.

and fifty dollars, and for each assistant to any "Itinerant Vendor" in any county there shall be paid the sum of twenty-five dollars.

3568. Application made in writing—Term of license.

SEC. 6. Application for an "Itinerant Vendor's" license shall be made in writing by the applicant to the county clerk and recorder for inspection and upon the payment of the proper license fee as indicated in section 5 of this act, whereupon the clerk shall issue to the applicant a license authorizing him to do business as an "Itinerant Vendor" in that county for one year from the date of issuing such license in the particular mannre described in such license, and such license shall be numbered consecutively and name the persons authorized to act thereunder not exceeding one principal and two assistants, and a license shall not be transferable.

[Section 5 referred to is section 3567.]

Legislation. Sec. 3568. Act 1905 § 6, cited under § 3562.

3569. License record kept by county clerk.

SEC. 7. Each county clerk and recorder shall keep on file all papers filed with him in connection with each license issued by him and he shall keep a record of all such licenses with the numbers, and of all license fees paid to him, and of the names and residences of each person and assistant acting under each license issued by him, and all such files and records shall be open to public inspection.

Legislation. Sec. 3569. Act 1905 § 7, cited under § 3562.

3570. Application of fees.

SEC. 8. All fees paid to clerks of counties for licenses granted under the provisions of this act shall be for the use of the county in which the license is granted.

Legislation. Sec. 3570. Act 1905 § 8, cited under § 3562.

3571. Licensee post name and number.

SEC. 9. Every person licensed as aforesaid as an "Itinerant Vendor" shall post his name, residence and the number of his

license in a conspicuous manner upon his pack parcels or vehicle or in a prominent place in his place of business, and when his license is demanded of him by any county officer, magistrate, sheriff, deputy sheriff, constable or police officer, he shall forthwith exhibit it, and if he neglects or refuses so to do, he shall be subject to the same penalty as if he had no license.

Legislation. Sec. 3571. Act 1905 § 9, cited under § 3562.

3572. License void on violation of act.

SEC. 10. The license or licenses of any person who may be convicted of a violation of any of the provisions of this act shall from the date of such conviction be null and void.

Legislation. Sec. 3572. Act 1905 § 10, cited under § 3562.

3573. Penalty for counterfeiting or forging license.

SEC. 11. Whoever counterfeits or forges a license, or has a counterfeited or forged license in his possession with intent to utter or use the same as true, knowing it to be false or counterfeit, shall be punished by a fine of not less than 25 dollars, nor more than 300 dollars, or by imprisonment in the county jail for a period of not less than 10 days, nor more than ninety days, or by both such fine and imprisonment.

Legislation. Sec. 3573. Act 1905 § 11, cited under § 3562.

3574. Selling goods without license--Making false application—Penalty.

SEC. 12. Every "Itinerant Vendor" who sells or exposes for sale, either at public or private sale, in any county in this state, any manufactured goods, wares or merchandise, without first having procured a license from the county in which he sells or exposes for sale such manufactured goods, wares or merchandise as provided for in this act, or files an application, original or supplementary, with the county clerk and recorder of any county, which contains any false statement, or being licensed according to the terms of this act fails to comply with all the requirements of this act, and every person, both principal or agent, who by

circular, handbill, newspaper, or in any manner whatsoever advertises any such unlicensed sale shall be punished by a fine of not less than 10 dollars, and not more than 100 dollars, or by imprisonment in the county jail for a period of not less than 10 nor more than 90 days, or by both such fine and imprisonment.

Legislation. Sec. 3574. Act 1905 § 12, cited under § 3562.

3575. Action to recover license fee—Attachment of goods.

SEC. 13. If a person who is liable for the payment of any license fee under the terms of this act, shall, after demand being made upon him by the county clerk and recorder of the county, in which such liability occurs, or by any sheriff or deputy sheriff of that county, refuses or neglects to pay to the county clerk and recorder the fee provided for in this act, the said county clerk may, in his own name, but for the use and benefit of the county, begin and maintain against the delinquent "Itinerant Vendor" an action at law for the recovery of such license fee, and for the purpose of securing any judgment which he may recover in any such action, such county clerk may have the said goods, wares and merchandise of such "Itinerant Vendor" in his county attached and held in like manner as is provided for in cases of attachment.

[When attachment will lie, section 3766 and Code section 98, p. 91.]

Legislation. Sec. 3575. Act 1905 § 13, cited under § 3562.

3576. False oath deemed perjury.

SEC. 14. If any person shall make any false or untrue oath for the purpose of procuring from any judge or county commissioner any certificate as provided for in section 4 of this act, he shall be held guilty of perjury and on conviction thereof in a court of competent jurisdiction he shall be punished as is or may be provided by law for the punishment of perjury committed in court on the trial of a cause.

[Section 4 referred to is section 3566.]

[For punishment of perjury see section 1716.]

Legislation. Sec. 3576. Act 1905 § 14, cited under § 3562.

3577. Fraud in sale of goods—Penalty.

SEC. 15. If any licensed "Itinerant Vendor" or any assistant of any licensed vendor shall commit any fraud in the sale of any manufactured goods, wares or merchandise by any false or short weight or measure, or sell any manufactured goods, wares or merchandise as being composed or manufactured in whole or part of material or ingredients different from which such manufactured goods, wares or merchandise are actually composed or manufactured, or sell any manufactured goods, wares or merchandise which are partly or entirely of a poisonous character or nature for the consumption of human beings, animals or fowls, or for application to the body, hair or skin of any human being or animal, he shall be punished by a fine of not less than thirty dollars and not more than three hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days, nor more than ninety days, or by both such fine and imprisonment.

Legislation. Sec. 3577. Act 1905 § 15, cited under § 3562.

3578. Jurisdiction of courts.

SEC. 16. Justices of the peace shall have jurisdiction, concurrent with district courts, to hear, try and determine all civil actions, and all criminal proceedings, arising under this act, or brought for the violation of any of the provisions of this act.

Legislation. Sec. 3578. Act 1905 § 16, cited under § 3562.

CITATIONS.

While the district court would have jurisdiction under this section it could not acquire jurisdiction by the transfer by consent of a proceeding pending on appeal in the county court.—*Morse v. Peo.*, 43 C. 121, 95 P. 286.

II. COMMISSION MERCHANTS.**Section.**

3579. Commission merchants—Bond—Renewal.

3580. Permit to do business—Letter and bill heads.

3581. Penalty for engaging in business without bond—False returns.

3582. Suit on bond.

3579. Commission merchants—Bond—Renewal.

SEC. 17. From and after the passage of this act, every person, company or corporation, engaged in the business of selling wares, goods, merchandise or produce upon commission, usually designated as commission merchants, shall execute a bond, with good and sufficient sureties, to be approved by the board of county commissioners, and filed with the clerk of the county in which such business is to be carried on, running to the people of the state of Colorado, and conditioned for the faithful accounting on demand or according to agreement for all of the goods, wares, merchandise or produce secured for sale, and for the payment to the owner of all moneys, less stipulated commissions and necessary charges, realized from the sale of such goods, wares, merchandise or produce. Such bond shall be in a sum fixed by the county commissioners of the county in which the business is to be carried on, such bond not to exceed the sum of ten thousand dollars, and not less than one thousand dollars, and a new bond shall be given at the beginning of each calendar year in such sum as the county commissioners may require.

Legislation. Sec. 3579. Act 1895 p. 145 § 1, entitled:

AN ACT

Requiring Commission Merchants to Give Bonds, and to Provide Penalties for Failure to Give Bonds, and for the Collection of the Penalty of the Bond.

3580. Permit to do business—Letter and bill heads.

SEC. 18. Upon the approval of the bond, as provided in section 1 of this act, the clerk of the county, upon the receipt of one dollar, shall issue a permit, under his hand, and the seal of the county, to the person, company or corporation giving the bond, authorizing such person, company or corporation to carry on the business of commission merchant in said county, until and including the 31st day of December following the issuing of the same, and such certificate shall state the amount of said bonds and shall be posted, by such commission merchant, in a conspicuous place in his store or place of business, and there shall be printed in conspicuous type on all letter and bill heads of every such com-

mission merchant, the following: "Amount of statutory bond approved by the County Commissioners of..... County, Colorado, \$....." the blanks to be filled out with the name of the proper county and the true amount of the bond.

[Section 1 referred to is section 3579.]

Legislation. Sec. 3580. Act 1895 § 2, cited under § 3579.

3581. Penalty for engaging in business without bond—False returns.

SEC. 19. Any person, company or corporation carrying on the business of commission merchant as hereinbefore defined without first giving the bond and obtaining the permit herein provided for, or who shall fail to comply with any of the requirements of section two hereof, or who after obtaining such permit make or cause to be made false returns of proceeds of sale of goods, wares or merchandise received for sale on commission, and all clerks, officers and employees of such commission merchants who shall knowingly make or cause to be made any false return of proceeds of sale of goods, wares or merchandise received for sale on commission by such commission merchant, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than fifty dollars and not more than five hundred dollars, or shall be imprisoned in the county jail for a period of not more than nine months or shall be both fined and imprisoned, at the discretion of the court.

[Section 2 referred to is section 3580.]

Legislation. Sec. 3581. Act 1895 § 3, cited under § 3579.

3582. Suit on bond.

SEC. 20. Upon breach of any of the conditions of such bond, any person, company or corporation who shall have sustained any injury or loss by reason of such breach, may institute an action in any court of such county, of competent jurisdiction, in the name of the people of the state of Colorado for the use and benefit of the person or persons, sustaining such injury or loss, or their

assigns, upon such bond for the loss or damages sustained by the breach of any conditions of such bond.

Legislation. Sec. 3582. Act 1895 § 4, cited under § 3579.

III. TRANSIENT DEALERS.

Section.

- 3582-A. Transient dealer defined.
 - 3582-B. Interstate commerce cases.
 - 3582-C. License required.
 - 3582-D. Fees for license.
 - 3582-E. Application for and issue of annual license.
 - 3582-F. License book—Record of fees.
 - 3582-G. Fees for use of county.
 - 3582-H. Must show license on demand.
 - 3582-J. Conviction forfeits license.
 - 3582-K. Punishment.
 - 3582-L. False statements—Selling prohibited things.
 - 3582-M. License to be individual.
 - 3582-N. Jurisdiction.
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3582-A. Transient dealer defined.

SEC. 20a. The term "transient dealer," for the purposes of this act, shall mean and include any person, either principal or agent, who engages in the business of traveling about carrying or conveying with him for sale and selling manufactured goods, manufactured wares or manufactured merchandise, so carried or conveyed with him for sale, and it shall also include peddlers and hawkers of manufactured goods, manufactured wares and manufactured merchandise.

Legislation. Sec. 3582-A. Sec. 1 of Act of 1911, S. B. No. 269, entitled:

AN ACT

Relating to "Transient Dealers," To License Them, and to Regulate Their Business. (Approved May 29, 1911.)

3582-B. Interstate commerce cases.

SEC. 20b. The provisions of this act shall not apply to any sale, act or thing the regulation or licensing of which would con-

stitute regulation or licensing of interstate commerce; and the provisions of this act shall not apply to any sale, act or thing permitted by the constitution or any law of the United States.

Legislation. Sec. 3582-B. Sec. 2 of Act of 1911, cited under § 3582-A.

3582-C. License required.

SEC. 20c. Except as permitted by the preceding section two (2) of this act, it shall not be lawful for any person to be engaged in the business of a "transient dealer," as defined in section one (1) of this act in any county in this state, unless such person shall be first duly licensed so to do under the provisions of this act.

Legislation. Sec. 3582-C. Sec. 3 of Act of 1911, cited under § 3582-A.

3582-D. Fees for license.

SEC. 20d. Every person, before transacting any business as a "transient dealer," either as principal or agent, in any county in this state, except as permitted in section two (2) of this act, shall first procure from the county clerk of the county in which such person intends or desires to engage in the business of a "transient dealer," a written or printed license to engage in the business of a "transient dealer" in that county, and pay to the county clerk of the county the following named fees for such licenses, viz.:

For each "transient dealer," traveling on foot, fifteen (15) dollars;

For each "transient dealer," traveling on a bicycle or tricycle, twenty-five (25) dollars.

For each "transient dealer" traveling by carriage or other vehicle drawn by one horse or other animal, fifty (50) dollars;

For each "transient dealer" traveling by carriage or other vehicle drawn by two or more horses, or other animals, seventy-five (75) dollars.

For each "transient dealer" traveling by automobile, motorcycle, or other self-propelling carriage, one hundred (100) dollars;

For each "transient dealer" traveling in any other manner

than hereinbefore described, one hundred and twenty-five (125) dollars.

Legislation. Sec. 3582-D. Sec. 4 of Act of 1911, cited under § 3582-A.

3582-E. Application for and issue of annual license.

SEC. 20e. Every person who procures a "transient dealer's" license shall first make in writing application therefor to the county clerk of the proper county, and pay the proper license fee as stated in section four (4) of this act, and such application shall state the name and the residence of the applicant, whether he transacts the business of a "transient dealer" as a principal or an agent, and if as an agent the name and residence and place of business of his principal, also the kind or classes of goods, wares and merchandise that he proposes to sell as a "transient dealer" in that county, and the particular manner in which he proposes to travel in that county as a "transient dealer," whereupon the county clerk shall issue to the applicant a written license authorizing him to engage in business as a "transient dealer" in that county for one year from the date of issuing such license, in the particular manner as applied for in the application, the substance of which application shall be stated in the license, and all such licenses shall be numbered consecutively, signed by the county clerk or his deputy and sealed with the seal of the county where issued, and no such license shall be transferable.

Legislation. Sec. 3582-E. Sec. 5 of Act of 1911, cited under § 3582-A.

3582-F. License book—Record of fees.

SEC. 20f. Each county clerk shall keep on file each application made to him for a license, a duplicate copy of each license issued by him, and all papers filed with him in connection with any license issued by him, and he shall keep a record of all license fees paid to him, and of the cancellation of any and all licenses issued by him that may be cancelled, and all such files and records shall at all times, be open to public inspection.

Legislation. Sec. 3582-F. Sec. 6 of Act of 1911, cited under § 3582-A.

3582-G. Fees for use of county.

SEC. 20g. All fees paid to clerks of counties for licenses issued under the provisions of this act shall be for the use of the county in which the license is issued.

Legislation. Sec. 3582-G. Sec. 7 of Act of 1911, cited under § 3582-A.

3582-H. Must show license on demand.

SEC. 20h. Every person licensed as a "transient dealer," whenever his license is demanded of him by any sheriff, magistrate, constable or police officer of any county in which such transient dealer" may be engaged in business, shall forthwith exhibit his license for examination by such officer, and if he neglects or refuses so to do, he shall be subject to the same penalty as if he had no license.

Legislation. Sec. 3582-H. Sec. 8 of Act of 1911, cited under § 3582-A.

3582-J. Conviction forfeits license.

SEC. 20j. The license and licenses of any person who may be convicted of a violation of any provisions of this act shall, from the date of such conviction, be null and void, and shall be cancelled on the records of the county clerk.

Legislation. Sec. 3582-J. Sec. 9 of Act of 1911, cited under § 3582-A.

3582-K. Punishment.

SEC. 20k. Every person who unlawfully engages in the business of a "transient dealer" in any county of this state and every person who in any county in this state transacts any business which under the provisions of section one (1) of this act would make him a "transient dealer," without having a valid license therefor as provided for in this act, shall be punished by a fine of not less than ten (10) dollars and not more than one hundred (100) dollars, or by imprisonment in the county jail for a period of not less than ten (10) days and not more than ninety (90) days, or by both such fine and imprisonment.

Legislation. Sec. 3582-K. Sec. 10 of Act of 1911, cited under § 3582-A.

3582-L. False statements—Selling prohibited things.

SEC. 20l. No person shall make any false or untrue statement in an application for a license as a "transient dealer," and no "transient dealer" shall commit any fraud in the transaction of his business as a "transient dealer," sell any manufactured goods, wares or merchandise by any false or short weight or measure, or sell any goods, wares or merchandise as being composed or manufactured in whole or in part of material or ingredients different from which such manufactured goods, wares or merchandise are actually composed or manufactured, or sell any manufactured goods, wares or merchandise which are partly or entirely of a poisonous or injurious character or nature, for consumption of human beings, animals or fowls, or for application to the body, hair or skin of any human being or animal. And every person who shall be convicted of a violation of any provision of this section shall be punished by a fine of not less than ten (10) dollars, and not more than one hundred (100) dollars, or by imprisonment in the county jail for not less than ten (10) days, and not more than one (1) year, or by both such fine and imprisonment.

Legislation. Sec. 3582-L. Sec. 11 of Act of 1911, cited under § 3582-A.

3582-M. License to be individual.

SEC. 20m. No more than one individual person shall engage in business or operate under the same "transient dealer's" license, whether as principal or agent or as assistant to any principal or any agent.

Legislation. Sec. 3582-M. Sec. 12 of Act of 1911, cited under § 3582-A.

3582-N. Jurisdiction.

SEC. 20n. Justices of the peace shall have jurisdiction, concurrent with district courts, to hear, try and determine all actions, and all criminal proceedings arising under this act, or brought for the violation of any provision of this act.

Legislation. Sec. 3582-N. Sec. 13 of Act of 1911, cited under § 3582-A.

CHAPTER LXXIV.

JAILS.

Section.

- 3583. Erection of jail in each county.
 - 3584. Sheriff keeper of jail—Expenses—Responsibility of sheriff.
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 - 3601-H. Trustees.
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3583. Erection of jail in each county.

SECTION 1. There shall be established and maintained in each county in this state, at the expense of the county, a county jail for the detention, safe keeping and confinement of persons and prisoners lawfully committed; *Provided*, That nothing in

this act contained shall be construed to compel the erection of jails in counties having a population of less than two thousand, or when the county owns a jail erected in any other place in the county.

Legislation. Sec. 3583. G. L. § 1388. G. S. § 1814.

This chapter is the Revision of 1877, G. L. Chap. 51, G. S. Chap. 58, except §§ 3588, 3589 *supra*. It repealed R. S. Chap. 46, which was codified from Acts 1861 pp. 107, 134.

3584. Sheriff keeper of jail—Expenses—Responsibility of sheriff.

SEC. 2. The sheriff of the county in person or by deputy for that purpose appointed, shall be the keeper of the county jail. He shall be responsible for the manner in which the same is kept; he shall see that the same is kept clean, safe and wholesome; and the expenses of keeping the jail in good order and repair, of lighting and warming that part thereof wherein prisoners are confined, and the office in the jail, shall be paid by the county wherein the jail is situated. But nothing herein shall authorize the lighting or warming that part of the jail occupied by the keeper thereof as his dwelling house.

[See also section 1279.]

Legislation. Sec. 3584. G. L. § 1389. G. S. § 1815.

CITATIONS.

No compensation is provided for the sheriff for his services as keeper of the jail.—*Larimer County v. Bransom*, 4 A. 276, 35 P.

3585. Duties of keeper—Food—Compensation.

SEC. 3. The keepers of the several county jails in this state shall receive and safely keep every person duly committed to such jail for safe keeping, examination or trial, or duly sentenced to imprisonment in such jail upon conviction for any contempt or misconduct, or for any criminal offense, and shall not without lawful authority let out of such jail on bail or otherwise, any such person. And it shall be the duty of every such keeper to supply proper food and drink for the prisoners committed to his custody in such jail at his own expense; and the board of county

commissioners of the county where such jail is situated shall allow the keeper of the jail for dieting prisoners such reasonable compensation per day as shall be just.

[Sheriff or jailer must give prisoner copy of mittimus within six hours, penalty, section 2932.]

[Penalty for re-arresting person discharged on habeas corpus, section 2933.]

[Penalty for inhuman treatment by jailer, section 1725.]

[When prisoner may be removed from jail, section 2928.]

Legislation. Sec. 3585. G. L. § 1390. G. S. § 1816.

Duty of county commissioners to furnish work and enact regulations for prisoners. § 1703.

CITATIONS.

This section cited in holding that no compensation is provided for the sheriff's services as jail keeper.—*Larimer County v. Bransom*, 4 A. 276, 35 P. 751.

The statute concerning jails referred to in holding that a city was not liable to a prisoner who was injured by the burning of the jail.—*McAuliffe v. Victor*, 15 A. 337, 62 P. 231.

3586. Separation of prisoners.

SEC. 4. Persons committed on criminal process and detained for trial, and persons committed for contempt or upon civil process, shall be kept in rooms separate and distinct from those in which prisoners convicted and under sentence shall be confined; *Provided*, That this section shall not apply to any county whose jail shall not have sufficient room for such separate confinement.

[Removing diseased persons from jails, sections 4890 and 5058.]

Legislation. Sec. 3586. G. L. § 1391. G. S. § 1817.

3587. Male and female prisoners.

SEC. 5. Male and female prisoners (except husband and wife) shall not be put or kept in the same room.

Legislation. Sec. 3587. G. L. § 1392. G. S. § 1818.

3588. Male prisoners to be kept at work—Road work—Disposition of earnings.

SEC. 6. Whenever any able bodied male prisoner is confined in the county jail of any county or the jail of any town or city,

having been convicted of a misdemeanor or of the violation of an ordinance of such town or city and being confined in punishment therefor, the sheriff of such county or the marshal or chief of police of such town or city shall compel such person to work at hard labor eight (8) hours of every working day.

Provided, however, That the provisions of this section shall not apply to any case where there are less than three prisoners so confined in said jail at any one time,* or to any prisoner physically unable to work; *Provided, further,* That in counties and cities of the first, second, third, fourth and fifth classes it will be discretionary with the sheriff or chief of police to employ prisoners on the roads serving sentences of sixty days or under.

It shall be the duty of the sheriff of such county or the marshal or chief of police of such town or city, when no other work is available, to compel the said prisoners to work upon the public roads, highways or streets of such county, city or town, in the making or repairing of such roads, highways or streets.

The county commissioners of the county or the city council or board of trustees of the city or town shall, when informed by the sheriff, marshal or chief of police that there are prisoners confined in his jail who may be put to work upon the roads, highways or streets, provide such work upon the roads, highways or streets and shall provide for the payment of additional expenses of guarding such prisoners while performing such work; but such prisoners shall not be used for the purpose of building any bridge or structure of like character which requires the employment of skilled labor.

Any sheriff, marshal or chief of police who shall fail or refuse to employ prisoners so confined, without the written consent therefor of the county commissioners or city council, as the case may be, of the county first had and obtained, shall, upon conviction, forfeit the sum of fifty dollars (\$50.00) for each and every day he shall fail or refuse to so employ the said prisoners; *Provided,* He shall not be required to employ such prisoners during inclement weather or upon legal holidays or Sundays.

It shall be the duty of such sheriff, marshal or chief of police to keep an accurate account of the earnings of each of such prisoners, less the expense of guarding, which said earnings shall be

computed upon the value of the work done, and report the same to the county commissioners once each month; and it shall be the duty of the county commissioners to provide for the payment out of the moneys so earned to the wife or minor children, if such there be, *provided*, such wife or minor children are residents of the county wherein such prisoners are confined, and wife or minor children would otherwise be a public charge, of such prisoner one-half of the amount so earned.

Legislation. Sec. 3588. Sec. 1 of Act of 1911, S. B. No. 417 approved June 2. Substitute for § 3588 which was Act of 1907 p. 613 § 1, entitled:

AN ACT

For the Employment of Prisoners in Jails.

3589. Prisoner confined for non-support—County contribute toward support of wife.

SEC. 7. Whenever any able-bodied person is so confined in the county jail, having been convicted of the non-support of his wife or minor children, the county shall pay toward the support of such wife or minor children not less than fifty cents nor more than one dollar per day for each day such person shall so work; *Provided*, That such wife or minor children would otherwise be a public charge.

[For commitment of husband for non-support see sections 3015 and 3018.]

Legislation. Sec. 3589. Act 1907 § 2, cited under § 3588.

3590. Commitment—Duplicate—Sheriff keep copy—Return endorsed.

SEC. 8. When a prisoner is committed to any jail by virtue of any process which the sheriff is required to return to the court whence it issued, it shall be the duty of the court, clerk or officer issuing such process to issue the same in duplicate, and the sheriff shall keep one copy of the same, together with a copy of his return thereto, endorsed thereon, which duplicate copy of such process retained by the sheriff shall be sufficient authority, *prima facie*, to retain such prisoner in custody.

Legislation. Sec. 3590. G. L. § 1393. G. S. § 1819.

3591. Commitments filed—Delivered to successor.

SEC. 9. All instruments of every kind, or attested copies thereof duly certified, by which any person is committed to or liberated from the county jail, shall be regularly endorsed and filed, and kept in a suitable box in the jail by the sheriff, or by his deputy acting as jailer, and such box, together with its contents, shall be delivered to his successor in office.

Legislation. Sec. 3591. G. L. § 1394. G. S. § 1820.

3592. Keeper keep record—Contents—Inspection.

SEC. 10. It shall be the duty of the keeper of each county jail to keep in a book, provided by the county for that purpose, a daily record of the commitments and discharges of all persons delivered to his custody, which record shall exhibit the date of entrance, name, offense, term of sentence, fine, age, sex, country, how and by whom committed, when and by whom discharged, which record shall be open to the inspection of the public at all reasonable hours and shall be delivered by the sheriff to his successor in office.

Legislation. Sec. 3592. G. L. § 1395. G. S. § 1821.

3593. When no jail, prisoner ordered to other county—Costs of keeping.

SEC. 11. When there is no sufficient jail in any county wherein any criminal offense shall have been committed, any justice of the peace, county or district judge, upon application of the sheriff, may order any person charged with any criminal offense, and ordered to be committed to jail, to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of the order of such judge, receive and keep in safe custody in the jail of his county the person or persons ordered to be committed as aforesaid. And such sheriff, upon the order of the district court or judge thereof, shall re-deliver such person or persons when demanded, and all the expenses of keeping such person or persons shall be paid by

the county from which such person or persons was or were sent, and the board of county commissioners of the county from which any prisoner or prisoners shall be sent, shall at the next regular meeting after receiving the bill for the expenses of such maintenance, safe keeping and custody, audit and allow the claim for such maintenance, safe keeping and custody, and pay the same in money to the treasurer of the county in which such jail is situated, for the use of such county.

Legislation. Sec. 3593. G. L. § 1396. G. S. § 1822. Drafted on Act 1861 p. 108 § 8, R. S. p. 367 § 8, and on Act 1861 p. 134 § 1, which was dropped in the revision of 1868 but substituted by its § 11 p. 367.

CITATIONS.

A justice of the peace is warranted in issuing a mittimus to the sheriff of another county to receive a prisoner and the sheriff is under imperative obligations to receive him; the expenses rest upon the county where the offence was committed.—*Montezuma County v. San Miguel County*, 3 A. 138, 32 P. 347.

3594. Keeping of fugitives—Charges—Judge approve—How paid.

SEC. 12. Any county jail may be used for the detention and safe keeping of any fugitive from justice from another state or territory, and in this case the county shall be entitled to compensation at the rate prescribed by the board of county commissioners; *Provided*, That the rate so charged shall be subject to the approval of the district judge, for the maintenance and safe keeping of such fugitive in custody, to be paid by the other demanding the custody of such fugitive, to the sheriff of the county, and by him paid over to the treasurer of the county for the use of the county.

[Sheriff taking prisoner through any county may use the jail there, etc., see section 1940.]

Legislation. Sec. 3594. G. L. § 1397. G. S. § 1823. Drafted on Act 1861 p. 109 § 9. R. S. p. 367 § 9.

3595. Juvenile prisoners—Separated—Parents, guardians may visit.

SEC. 13. Juvenile prisoners shall be treated with humanity and in such manner as will promote their reformation; they shall

be kept in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends, who desire to exert a moral influence over them, shall at all reasonable hours be permitted.

[Boy or girl sentenced to industrial school not to be confined in jail, sections 3036 and 3081.]

[For juvenile court see sections 1589 to 1607.]

[For imprisonment of juvenile delinquent, see section 591.]

[For detention houses see section 1210.]

Legislation. Sec. 3595. G. L. § 1398. G. S. § 1824. R. S. p. 367 § 10.

3596. Guards—Compensation.

SEC. 14. Whenever the safe keeping and detention of persons lawfully committed to any jail in this state shall, in the opinion of the board of county commissioners, require the employment of one or more guards, the said board of county commissioners of the county where such jail is situated, shall authorize the sheriff of such county to employ such guard or guards at the expense of the county, at such reasonable compensation as such board shall allow; which guard or guards shall be under the command of the keeper of the jail; *Provided*, That such guard or guards shall be discharged from service whenever in the judgment of the board of county commissioners their services are not required.

Legislation. Sec. 3596. G. L. § 1399. G. S. § 1825.

CITATIONS.

This section cited in holding that no compensation is provided for a sheriff's services as jail keeper.—*Larimer County v. Bransom*, 4 A. 277, 35 P. 751.

3597. United States prisoners to be kept—Expense.

SEC. 15. It shall be the duty of the keeper of each county jail to receive into the jail every person duly committed thereto for any offense against the United States, by any court or officer of the United States, and to confine every such person in the jail until he shall be duly discharged, the United States paying all the expenses of the confinement, safe keeping and custody of such person, including the keeper's fees, at the rate established by the

board of county commissioners of the county where such jail is situated.

Legislation. Sec. 3597. G. L. § 1400. G. S. § 1826.

3598. Charges for United States prisoners—Judge approve.

SEC. 16. It shall be the duty of the board of county commissioners of each county having a jail in this state, to establish a rate of charges to be paid for the confinement, safe-keeping and maintenance of prisoners sent from other counties in this state, fugitives from justice, and persons committed by authority of the United States, which rate of charges may be altered, changed or modified by the board of county commissioners of such county, whenever in their judgment it shall seem best to do so: *Provided*, That the rate so charged shall be subject to the approval of the judge of the district court of such county.

Legislation. Sec. 3598. G. L. § 1401. G. S. § 1827.

3599. Jailer keep account of moneys—Report quarterly.

SEC. 17. It shall be the duty of the keeper of every jail within this state to keep an accurate account of all moneys received by him on account of the confinement, safe-keeping and maintenance of persons committed from other counties, fugitives from justice and prisoners committed to the jail by authority of the United States, and to report the same quarterly to the board of county commissioners of the county wherein such jail is situated, and to pay over to the treasurer of such county quarter-yearly all such moneys for the use of such county.

Legislation. Sec. 3599. G. L. § 1402. G. S. § 1828.

3600. County commissioners examine jail.

SEC. 18. It shall be the duty of the county commissioners to make personal examination of the jail of their county, its sufficiency and the management thereof, during each session of the

board, and to correct all irregularities and improprieties therein found.

[Board of charities and corrections shall examine jails, section 496.]

Legislation. Sec. 3600. G. L. § 1403. G. S. § 1829.

CITATIONS.

This section imposes a public official duty, and commissioners are not individually liable for the death of a prisoner caused by the burning of the jail.—*Miller v. Ouray Electric Light Co.*, 18 A. 137, 70 P. 448.

3601. Escape—Duty of sheriff—Expenses—When allowed.

SEC. 19. In case of escape of any person lawfully committed to any jail of any county in this state, it shall be the duty of the sheriff of the county where such jail is situated, to pursue and recapture such escaped person or persons at his own expense, and nothing herein contained shall be construed to make the county wherein such jail is situated liable for or on account of the escape of any prisoner committed to such jail from another county, or by authority of the United States, or for the escape of any fugitive from justice; *Provided*, That in case of any escape without any fault or negligence on the part of the keeper of the jail, or the guards under his command, the county commissioners of the county where such jail is situated may audit and allow to the sheriff the necessary expenses incurred in such recapture, if they deem it best.

[Insane person shall not be confined in jail, section 4138.]

Legislation. Sec. 3601. G. L. § 1404. G. S. § 1830.

3601-A. Allowance of good time.

SEC. 20a. That every person who is now, or may hereafter be, sentenced to and imprisoned in any county jail of this state or to pay a fine or fines and costs or either or all thereof, and who shall perform faithfully the duties assigned to him, or her, during his, or her, imprisonment therein, shall be entitled to a deduction from the time of his, or her, sentence, of two days in

each month; *Provided*, That if any such person shall escape, or attempt to escape, from the county jail, he, or she, shall forfeit and lose any and all deduction from the time of his, or her, sentence, which he, or she, may have been entitled to up to the time of the escape, or attempt at escape, as provided for in this section.

Legislation. Sec. 3601-A. Sec. 1 of Act of 1911, S. B. No. 204, entitled:

AN ACT

Concerning Prisoners Confined in the County Jails Under Sentence and Providing for Parole of Such Prisoners for Good Conduct and Work. [Approved May 29, 1911.]

This Act should be construed with § 3588, which was approved at a later date.

The word "Convicts" which repeatedly occurred in the Bill as introduced was changed before passing to "male persons" or some like equivalent wherever it occurred, but it is manifest that no section of the Act can legally apply to persons in jail awaiting trial.

3601-B. Forfeiture of good time.

SEC. 21b. In case any such person in the county jail shall be guilty of wilful violation of any of the rules or regulations of the jail, and shall have become entitled to any deduction from the time of his, or her, sentence by the provision aforesaid, he, or she, shall forfeit the right of such deduction, to be determined by the sheriff of the county in which such jail is situated.

Legislation. Sec. 3601-B. Sec. 2 of Act of 1911, cited under § 3601-A.

3601-C. Continuous sentences.

SEC. 21c. That for the purpose of this act whenever any such persons confined in the county jail shall be sentenced under several convictions, with separate sentences, they shall be construed as one continuous sentence.

Legislation. Sec. 3601-C. Sec. 3 of Act of 1911, cited under § 3601-A.

3601-D. Record of broken rules.

SEC. 21d. It shall be the duty of the sheriff of each county to keep a record, in a book for that purpose, of all infractions of

the prison rules and regulations, as may be prescribed by law or by him.

Legislation. Sec. 3601-D. Sec. 4 of Act of 1911, cited under § 3601-A.

3601-E. All male prisoners to work.

SEC. 21e. All male persons sentenced to and confined in the county jail, under the laws of this state, except such as are precluded by the terms of the judgment, shall perform labors under such rules and regulations as may be prescribed by the county commissioners or sheriff of the county in which such jail is situated.

Legislation. Sec. 3601-E. Sec. 5 of Act of 1911, cited under § 3601-A.

3601-F. Detail to work on road.

SEC. 21f. Upon the written request of a majority of the board of county commissioners of any county in the state of Colorado, the sheriff shall detail such male persons in the county jail as in his judgment shall seem proper, not exceeding the number specified in said written request, to work upon such public roads and highways of such counties, or streets and alleys of any city or incorporated town within such county, as shall be designated in said written request of said county commissioners; *Provided*, That such county shall pay all additional expenses of guarding said persons while working upon said public roads and highways within such county, and shall furnish all tools and material necessary in the performance of said work. *And, provided*, That no such work shall be within the limits of a city or incorporated town without the consent of the proper authorities thereof, but when said work is done within the limits of a city or incorporated town the city or incorporated town where said work shall be done shall pay all additional expenses of guarding such persons while performing said work, and shall furnish all tools and necessary material used in said work.

Legislation. Sec. 3601-F. Sec. 6 of Act of 1911, cited under § 3601-A.

3601-G. Skilled labor.

SEC. 21g. Said persons in the county jail, while employed under the provisions of this act, shall not be used for the purpose of building any bridge, or structure of like character, which requires the employment of skilled labor.

Legislation. Sec. 3601-G. Sec. 7 of Act of 1911, cited under § 3601-A.

3601-H. Trusties.

SEC. 21h. Hereafter such persons confined in the county jail, undergoing any such sentence in accordance with law, who shall or may be engaged in work outside of the walls of the jail, and known as "trusty prisoners," and who are designated by the sheriff as "trusty prisoners," and who shall conduct themselves in accordance with the rules of the sheriff of the county, and perform their work in a creditable manner may, upon approval of the sheriff, be granted such good time, in addition to that allowed in section 1 hereof, as the sheriff may order, not to exceed ten days in any one calendar month. This granting of additional time is not to be construed as affecting any so-called "trusty prisoners," who shall at any time be engaged in regular prison duty while confined within the walls of the county jail.

Legislation. Sec. 3601-H. Sec. 8 of Act of 1911, cited under § 3601-A.

Allowance of good time to convicts in penitentiary § 4871. Additional time to compensate for labor § 4881.

CHAPTER LXXV.

JOINT RIGHTS AND OBLIGATIONS.

Section.

3602. All joint estates pass as estates in common.
3603. Trespass by co-tenant—Majority may work mines.
3604. Joint obligation and covenants—To be held joint and several.
3605. Creditor may release one or more joint debtors.
3606. Joint debtor liable only for pro rata share.
3607. Not affect right of surety to recover.
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3602. All joint estates pass as estates in common.

SECTION 1. If partition be not made between joint tenants, the parts of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, etc., or transmissible to executors or administrators, and be considered to every intent and purpose in the same view as if such deceased joint tenants had been tenants in common.

Legislation. Sec. 3602. Act 1861 p. 113 § 1. R. S. p. 368 § 1. G. L. § 1406. G. S. § 1832.

3603. Trespass by co-tenant—Majority may work mines.

SEC. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common or co-parcenary, the party aggrieved shall have his action of trespass or trover, for the injury in the same manner as he would have if such joint tenancy, tenancy in common, or co-parcenary did not exist.

Nothing herein contained shall prevent one joint tenant, tenant in common, or co-parcenary, owning at least 51%, or any

number of joint tenants, tenants in common, or in co-parcenary owning at least 51%, acting together, from entering on the common mining property at any point or points not then in actual occupancy of the non-joining joint tenant or tenants, tenant or tenants in common, co-parcener or co-parceners, and enjoying all rights of occupancy of the property, mining the same in a miner-like manner, and extracting, milling or disposing of the ore from the common property, paying his or their own expenses, and subject to accounting to the non-joining joint tenant or tenants, tenant or tenants in common, co-parcener or co-parceners, for the net profits of such mining operations if any made, *Provided*, a written consent or statement of intent to so work shall be filed by the owner or owners of at least 51% of the property in the office of the clerk and recorder of the county wherein the same is situated; *And, provided, further*, liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working joint tenant or tenants, tenant or tenants in common, co-parcener or co-parceners, but nothing herein shall prevent or preclude the joint tenant, tenant or tenants in common, co-parcener or co-parceners, not joining in the operation of such mining property, from receiving his or their proportionate share of all ore or ores mined therefrom upon payment of the actual cost of mining the same.

Legislation. Sec. 3603. Sec. 1 of Act of 1911, H. B. No. 38 approved May 23, 1911. Substitute for § 3603 which was G. S. § 1833, G. L. § 1407, R. S. p. 368 § 2 Act of 1861 p. 113 § 2.

The amendment consists in adding the second paragraph of the text and is confined to mining co-tenants.

There are practically no joint tenants or co-parceners in the State.

3604. Joint obligations and covenants—To be held joint and several.

SEC. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

Legislation. Sec. 3604. Act 1861 p. 113 § 3. R. S. p. 368 § 3. G. L. § 1408. G. S. § 1834.

One of several jointly interested parties cannot bind the others. §4079. Nor does payment by one bind or estop the others. §§ 4082, 4083.

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Obligation as implied in this and sec. 13 of the code does not embrace or apply to oral contracts.—*Exchange Bank v. Ford*, 7 C. 315, 322, 3 P. 450. *Sawyer v. Armstrong*, 23 C. 290, 47 P. 392.

By this section and sec. 13 of the code joint instruments including promissory notes are declared to be several.—*Hamill v. Ward*, 14 C. 279, 23 P. 330.

Whenever the word "obligation" is used with reference to a legal duty or liability it includes any indebtedness arising from contract expressed or implied, oral or written.—*Sawyer v. Armstrong*, 23 C. 290, 47 P. 392

This section and sec. 13 of the code do not apply to partnership contracts.—*Thompson v. White*, 25 C. 235, 54 P. 722. *Blythe v. Cordingly*, 20 A. 513, 80 P. 497.

A contract by three parties to repay money paid to one of them, if the sum was not paid by a third party, was joint and several under this section.—*Doyle v. Nesting*, 37 C. 527, 88 P. 864.

Cited in holding that one who has endorsed a promissory note previous to delivery is the maker and the obligation joint and several.—*Tabor v. Miles*, 5 A. 129, 38 P. 112.

3605. Creditor may release one or more joint debtors.

SEC. 4. A creditor of joint debtors may release one or more of such debtors, and such release shall operate as a full discharge of such debtor or debtors so released, but such release shall not release or discharge or affect the liability of the remaining debtor or debtors. Such release shall be taken and held to be a payment in the indebtedness of the full proportionate share of the debtor or debtors so released.

Legislation. Sec. 3605. Act 1899 p. 239 § 1, entitled:

AN ACT

To allow the release of joint debtors.

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This section does not apply to the release of some of the joint debtors under a judgment rendered before the statute went into effect.—*Ducey v. Patterson*, 37 C. 218, 226, 86 P. 110.

3606. Joint debtor liable only for pro rata share.

SEC. 5. In case one or more joint debtors are released, no one of the remaining debtors shall be liable for more than his proportionate share of the indebtedness, unless he is the principal debtor and the debtor released was his surety, in which case such principal debtor or debtors shall be liable for the whole of the remainder of the indebtedness.

Legislation. Sec. 3606. Act 1899 § 2, cited under § 3605.

3607. Not affect right of surety to recover.

SEC. 6. Nothing herein shall affect or change the right of a surety who has paid his proportionate share of an indebtedness from recovering the same from his principal debtor.

Legislation. Sec. 3607. Act 1899 § 3, cited under § 3605.

CHAPTER LXXVI.

JUDGMENTS AND EXECUTIONS.

- I. PROPERTY SUBJECT TO LEVY.—3608-3626.
- II. EXEMPTIONS.—3627-3636.
- III. CERTIFICATES OF LEVY.—3637-3640.
- IV. SALE OF LANDS.—3641-3648.
- V. SALE OF CHATTELS.—3649-3651.
- VI. REDEMPTIONS.—3652-3658.
- VII. DEATH OF PARTIES.—3659-3663.
- VIII. KANSAS, PEOPLE'S, MINERS' COURTS.—3664-3667.

I. PROPERTY SUBJECT TO LEVY.

Section.

- 3608. What property may be first levied on.
- 3609. Property subject to execution—Transcript of judgment filed—
Lien—Real estate defined.
- 3610. Transcript of judgment rendered in U. S. court filed.
- 3611. From date of filing judgment becomes a lien.
- 3612. Transcript need not be filed in county where judgment rendered.
- 3613. Legal and equitable interests in land subject to execution.
- 3614. Holders of land office certificates included.
- 3615. What moneys may be levied on.
- 3616. No garnishment for less than twenty dollars.
- 3617. Corporate stock subject to levy.
- 3618. Levy on corporate stock.
- 3619. Same—Levy, how made.
- 3620. Shares attached held subject to judgment.
- 3621. Certificate of purchase of stock—Copy.
- 3622. Purchaser of stock legal owner—Right.

[See Chapter 68, Imprisonment for Debt.]

[For issuance, form and levy of execution, from justice courts, see sections 3755-3765.]

I. PROPERTY SUBJECT TO LEVY.

Continued.

Section.

3623. Property to be sold in parcels.

3624. Interest on judgment 10 per cent.

3625. Execution to any county.

3626. Execution returnable in ninety days—Sheriff endorse date of receiving.

3608. What property may be first levied on.

SECTION 1. The plaintiff in execution may elect on what property he will have the same levied except the land on which the defendant resides, which shall be last taken in execution, excepting and reserving, however, to the defendant in execution such property as is, or may be, by law exempted from execution.

[How judgment against county paid. Section 1183.]

Legislations. Sec. 3608. Act 1861 p. 285 § 9, amended by act 1865 p. 72. R. S. p. 372 § 9. G. L. § 1415. G. S. § 1847.

3609. Property subject to execution—Transcript of judgment filed—Lien—Real estate defined.

SEC. 2. All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment shall be obtained in any court of record, either at law or in equity, for any debt, damages, costs or any other sum of money, shall be liable to be sold on execution to be issued upon such judgment; and the transcript of the docket entry of any judgment in the judgment docket, certified by the clerk, may be filed with the recorder of any county; and from the time of filing such transcript, the judgment shall become a lien upon all the real property of such judgment debtor, not exempt from execution in such county, owned by him, or which he may afterwards acquire, until said lien expires.

The lien shall continue for six years from the entry of judgment, unless the judgment be previously satisfied; *Provided*, That in case the party in whose favor any such judgment shall have been entered shall be restrained by injunction out of chancery or

order of any judge or court, either from issuing execution or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of said six years; *And, provided, further,* That execution may issue on such judgment, to enforce the same at any time within twenty (20) years from the entry thereof, but not afterwards, unless revived as provided by law, and from and after twenty (20) years from the entry of final judgment, in any court of this state, the same shall be considered as satisfied in full, unless revived as provided by law. The term "Real Estate" in this section, shall be construed to include all interest of the defendant, or any person to his use held or claimed by virtue of any deed, bond, covenant, or otherwise, for a conveyance or as mortgagor of lands in fee, for life, or for years.

[See judgments, Chapter 18, Code.]

[Revival of judgment, Chapter 19, Code.]

[Married woman's property subject to judgment and execution. Sections 4187, 4189 and 4191.]

Legislation. Sec. 3609. Act 1901 p. 231 § 1 amending Act 1891 p. 246 § 1, which amended G. S. § 1835. G. L. § 1409. R. S. p 370 § 1. Act 1861 p. 264 § 1.

This section in the R. S. was a reprint of the act of 1861, except that it struck out the words "mortgagee or" before "mortgagor" in the last line. The lien lasted seven years from the last day of the term of court at which judgment was entered.

The material amendments in the G. L. enactment were to change the length of lien from seven years to six and to make it run from the date of entry of judgment. The G. S. was a reprint of the G. L. without change.

Up to 1891 the section retained the clause that execution must issue within one year to maintain the validity of the judgment.

In 1891 the section was amended. The words "twenty years" occur twice in the last proviso of the text, but owing to a blunder in the clerical work the act in 1891 read "twenty years" in one place and "ten years" on the repetition of the period of time, which made the section inconsistent with itself, so that it was re-enacted in 1901 with no other change than to make it read "twenty years" in both places.

The section as re-enacted in 1877 read:

Section 1. All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs or any other sum of money, shall be liable to be sold on execution, to be issued upon such judgment, and the said judgment shall be a lien on the real property of the judgment debtor not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until said lien expires. The lien shall continue for six years from the entry of judgment unless the judgment be previously satisfied. Provided, that execution be issued at any time within one year, on such judgment; and from and after the said six years the same shall cease to be a lien on any real estate, as against bona fide purchasers or subse-

quent encumbrancer by mortgage, judgment or otherwise; provided, that in case the party in whose favor any such judgment shall have been entered shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of the said six years. The term real estate in this section, shall be construed to include all interest of the defendant, or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise, for a conveyance or as mortgagor of lands, in fee for life, or for years.

See Code, Sec. 251, and notes.

CITATIONS.

A bond for the conveyance of real estate was included in the term "real estate."—*McFarren v. Knox*, 5 C. 221.

No time is limited by law for the filing of a transcript; when recorded the creditor obtains a judgment lien upon all the real estate of the debtor.—*Emery v. Yount*, 7 C. 110, 1 P. 686.

A bill for discovery to have lands in another county held in trust, subjected to a judgment will not lie where a transcript was not filed in such other county.—*Barnes v. Beighly*, 9 C. 479, 12 P. 908.

Neither the provisions of the statute nor of the code authorize an officer to take personal property from the possession of a mortgagee upon a writ of execution or attachment.—*Metzler v. James*, 12 C. 327, 332, 19 P. 890.

A vendors lien is not such an interest in real estate as is liable to sale on execution.—*Fallon v. Worthington*, 13 C. 566, 22 P. 962.

A mortgagee as well as a stranger may subject the mortgagor's interest in land to the payment of an independent debt.—*Seaman v. Haz*, 14 C. 538, 24 P. 461.

Interests in lands such as chattels real, leases for a term of years, and the like are regarded as real estate instead of personality.—*McKee v. Howe*, 17 C. 541, 31 P. 116.

A mere judgment creditor can not maintain a creditor's suit to reach property in the name of the debtor's wife without first obtaining a specific lien by filing a transcript of the judgment or by other proceedings mentioned.—*Robison v. Gumaer*, 43 C. 311, 95 P. 935.

A judgment which has been made a lien is superior to a secret equity of which the creditor had no notice.—*Western Chemical M. Co. v. McCaffrey*, 47 C. 397, 107 P. 1081.

An attachment lien merges in that of the judgment when a judgment lien is acquired but the latter relates back to the date

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of the former. The duration of an attachment lien is six years.—*Floyd v. Sellers*, 7 A. 504, 44 P. 375.

The act of 1891 providing that after ten years a judgment should be considered satisfied did not apply to judgments rendered prior to its passage.—*Jones v. Stockgrowers Bank*, 17 A. 81, 67 P. 178.

Where a deed to a trustee expressed a mere passive trust, a judgment lien against the beneficiaries was superior to an attorney's lien in favor of the trustee.—*Teller v. Hill*, 18 A. 518, 72 P. 814.

3610. Transcript of judgment rendered by U. S. court filed.

SEC. 3. That a transcript of the docket entry of any judgment or decree rendered in any district or circuit court of the United States within this state, duly certified by the clerk of such district or circuit court of the United States, may be filed with the recorder of deeds of any county, in the same manner as the transcript of the docket entry of any judgment of the court of general jurisdiction of this state may be filed.

Legislation. Sec. 3610. Act 1889 p. 456 § 1, entitled:

AN ACT

Authorizing Transcripts of Judgments and Decrees of the United States Courts in the State of Colorado to be Filed with Recorders of Deeds of the Several Counties.

3611. From date of filing judgment becomes a lien.

SEC. 4. That from the date of the filing of such transcript, and not before, such judgment or decree shall be a lien upon all the real estate of the judgment debtor not exempt from execution in such county, owned by him, or which he may afterwards acquire, in the county where such transcript of judgment shall be so recorded, in the same manner and to the same extent, and under the same conditions only, as if such judgment or decree had been rendered by a court of general jurisdiction of this state.

Legislation. Sec. 3611. Act 1889 § 2, cited under § 3610.

3612. Transcript need not be filed in county where judgment rendered.

SEC. 5. Nothing herein shall be construed to require the docketing of a judgment or decree of the United States court, or the filing of a transcript thereof in the office of the county clerk and recorder of the same county in which the judgment or decree of the United States court is rendered in order that said judgment or decree shall be a lien upon any property within such county.

Legislation. Sec. 3612. Act 1889 § 3, cited under § 3610.

3613. Legal and equitable interests in land subject to execution.

SEC. 6. Every interest in land, legal and equitable, shall be subject to levy and sale under execution, and the claim or possessory right of any defendant in execution, in or to any public lands, may be levied upon and sold under execution, in the same manner as if the same were held by such defendant in fee simple; *Provided*, That nothing in this chapter contained shall be so construed as to give any plaintiff in execution the right to levy on any lands filed on by any person, in the land office of the Colorado land district, and occupied as a homestead by the defendant in execution.

Legislation. Sec. 3613. § 9 of Act of 1865 p 74. R. S. p. 384 § 52. G. L. § 1453. G. S. § 1883.

CITATIONS.

A creditor's bill will not lie to have land in another county held in trust, subjected to a judgment where no transcript of the judgment had been filed in such other county.—*Barnes v. Bieghly*, 9 C. 479, 12 P. 908.

This section cited in holding that neither the provisions of the statute nor of the code authorized an officer to take personal property from the possession of a mortgagee upon a writ of execution.—*Metzler v. James*, 12 C. 332, 19 P. 890.

A creditor may bring his action to set aside a fraudulent deed before attempting to subject the premises to execution.—*Stockgrowers Bank v. Newton*, 13 C. 250, 22 P. 444. *O'Connell v. Taney*, 16 C. 356, 27 P. 889.

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The separate interest, legal and equitable, of each partner is liable to execution for the debts of the partnership.—*Mulock v. Wilson*, 19 C. 303, 35 P. 535.

The proviso of this section has reference solely to lands the title of which still remains in the government.—*Weare v. Johnson*, 20 C. 365, 38 P. 375.

An action lies to restrain a sale of plaintiff's property under execution as the property of a third person and to prevent a cloud upon plaintiff's title. Sufficiency of complaint in such case.—*Bell v. Murray*, 13 A. 223, 57 P. 490.

3614. Holders of land office certificates included.

SEC. 7. The legal holder or holders, by record, of any certificate of purchase of lands of the United States, shall be deemed to be within the true intent and meaning of this act.

Legislation. Sec. 3614. Act 1861 p. 265 § 3. R. S. p. 371 § 3. G. L. § 1411. G. S. § 1843.

3615. What moneys may be levied on.

SEC. 8. All current gold and silver coin, bank bills, and other evidence of debt, used or circulated or intended to be used or circulated as money, and issued by any corporation or state, or by the United States, may be levied upon under any execution or writ of attachment, as other personal property is levied upon or attached, and shall be returned by the officer making such levy as so much money collected without sale.

Legislation. Sec. 3615. § 2 of Act of 1865. R. S. p. 383 § 45. G. L. § 1446. G. S. § 1876.

3616. No garnishment for less than twenty dollars.

SEC. 9. No order of attachment on any garnishee shall be made out or issued in any court of record in this state for any sum less than twenty dollars.

[Execution not valid against mechanic's lien. Section 4030.]

Legislation Sec. 3616. R. S. p. 383 § 44. G. L. 1445. G. S. § 1875.

3617. Corporate stock subject to levy.

SEC. 10. That rights and shares of stock in any corporated company owned or held by any defendant in execution, or by any person in trust for or to the use of any defendant in execution, may be levied upon under any execution or writ of attachment, and may be sold under any execution, in the manner hereinafter provided.

Legislation. Sec. 3617. § 3 of Act of 1865 p. 73. R. S. p. 383 § 46. G. L. § 1447. G. S. § 1877. Duplicate of Code § 109. Like section applicable to Justices' Courts § 3777.

CITATIONS.

Sections 3617-3622 apply as well to attachments issued out of a justice's court as to those emanating from courts of record. —*Conway v. John*, 14 C. 34, 23 P. 171.

3618. Levy on corporate stock.

SEC. 11. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company, or for whom or to whose use any shares or stock in any incorporated company are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary or chief clerk of such incorporated company, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company.

Legislation. Sec. 3618. Act 1865 p. 73 § 4. R. S. p. 383 § 47. G. L. § 1448. G. S. § 1878. See notes to Code § 110.

3619. Same—Levy, how made.

SEC. 12. Any officer, upon obtaining information in the manner provided in the last section, or otherwise, that a defendant in any execution or writ of attachment held by him, owns or holds any rights or shares in the stock of any incorporated company, or that such rights or shares are owned or held by any other person in trust for, or to the use of such defendant, may make a levy of such execution, or writ of attachment on such rights or

shares, by leaving a true copy of such writ with the president, secretary, cashier or chief clerk of such incorporated company, and, if there be no such officer, then with some other officer of such incorporated company, with a certificate of the officer making the levy, setting forth that he levies upon and takes in execution or attachment such rights or shares, to satisfy such execution or attachment.

Legislation. Sec. 3619. Act 1865 p. 73 § 5. R. S. p. 383 § 48. G. L. § 1449. G. S. § 1879. See note to Code §§ 111-114.

3620. Shares attached held subject to judgment.

SEC. 13. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment, shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon any such rights or shares, the same shall be sold in like manner as personal property is, by existing law, provided to be sold.

Legislation. Sec. 3620. Act 1865 p. 74 § 6. R. S. p. 384 § 49. G. L. § 1450. G. S. § 1880. See note to Code §§ 111-114.

3621. Certificate of purchase of stock—Copy.

SEC. 14. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company, under an execution, to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares; and such officer shall also leave with the president, secretary, cashier or chief clerk, or if there be none, with any other officer of such incorporated company, a true copy of such certificate; and thereupon it shall be the duty of the officer, clerk, or other person having charge of the books of such incorporated company, to make such entries in the books of such company as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchaser of the same.

[See Code, sections 109-114, Attachments, Chapter 6.]

Legislation. Sec. 3621. Act 1865 p. 74 § 7. R. S. p. 384 § 50. G. L. § 1451. G. S. § 1881. See note to Code §§ 111-114.

3622. Purchaser of shares, legal owner—Rights.

SEC. 15. Every purchaser of rights or shares of stock in any incorporated company, at any sale thereof made by any officer, upon receiving a certificate of the sale thereof as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company as the defendant in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company.

Legislation. Sec. 3622. Act 1865 p. 74 § 8. R. S. p. 384 § 51. G. L. § 1452. G. S. § 1882.

3623. Property to be sold in parcels.

SEC. 16. When any property, real or personal, shall be taken in execution, if such property is susceptible of division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.

Legislation. Sec. 3623. Act 1861 p. 266 § 10. R. S. p. 372 § 10. G. L. § 1416. G. S. § 1848.

CITATIONS.

A sheriff's return of an execution under which several lots were sold, which recited that the property was sold to the plaintiff, did not overcome the presumption that the sheriff did his duty by first offering the property in parcels.—*Leppel v. Kus*, 38 C. 293, 88 P. 448.

3624. Interest on judgment ten per cent.

SEC. 17. In all executions, to be issued upon judgments recovered upon contracts expressed or implied, it shall be lawful to direct the collection of interest on the said judgment from the time of recovering the same until paid, at the rate of ten per cent. per annum.

[Is this section repealed by section 3162?]

Legislation. Sec. 3624. Act 1861 p. 265 § 4. R. S. p. 371 § 4. G. L. § 1412. G. S. § 1844. This section would seem to be abrogated by § 3162. The rate is reduced to 8 per cent., but the word judgment in the later section is not limited as in the text, to judgments on contracts.

3625. Execution to any county.

SEC. 18. It shall be lawful for the party in whose favor any judgment as aforesaid may be obtained to have execution or executions, in the usual form, directed to any county, or counties, in this state, against the goods, chattels, lands and tenements of such party defendant, or upon his body, when the same is authorized by law.

Legislation. Sec. 3625. Act 1903 p. 299 § 1, amending G. S. § 1845. G. L. § 1413. R. S. p. 371 § 5. Act 1861 p. 265 § 5.

The amendment consisted in adding the words "or executions" after "execution" and the words "or counties" after "county."

CITATIONS.

In an action against a sheriff for damages sustained by a false return it is no defense that two executions issued on the same day to different counties.—*Peo. v. Finch*, 19 A. 517, 76 P. 1122.

3626. Execution returnable in 90 days—Sheriff endorse date of receiving.

SEC. 19. All executions shall be made returnable ninety (90) days after date, and no writ of execution shall bind the personal property, goods, or chattels, of any person against whom such writ shall be issued until such writ shall be delivered to the sheriff or other officer to be executed and for a better manifestation of the said time the sheriff or other officer shall, on receipt of every such writ, endorse upon the back thereof the hour, day of the month, and year when the same was received by him, and shall immediately enter the receipt of said writ and the said time of receiving the same in a book to be kept for that purpose at the office of the sheriff and said book shall be a public record and open to the inspection of the public; and the said execution shall be returned within ninety days from date of issue, unless sale is pending under levy made.

Legislation. Sec. 3626. Act 1903 p. 219 § 1, amending G. S. § 1846. G. L. § 1414. R. S. p. 371 § 8. Act 1861 p. 265 § 8. This section before amendment read:

Sec. 6. All executions shall be made returnable ninety days after date, and no writ of execution shall bind the property of the goods and chattels of any person against

whom such writ shall be issued, until such writ shall be delivered to the sheriff, or other officer, to be executed; and for the better manifestation of the said time, the sheriff or other officer shall, on the receipt of every such writ, indorse upon the back thereof the hour, day of the month, and year, when he received the same.

CITATIONS.

Executions are returnable without reference to any term of court.—*Brown v. Peo.*, 3 C. 119.

The lien of an execution is prior to that of a chattel mortgage recorded after delivery of the execution, though before its levy. Effect of delay in levying execution.—*Williams v. Mellor*, 12 C. 6, 19 P. 842.

Execution liens are entitled to priority over each other in accordance with their respective dates of delivery. A sale under a senior execution discharges its priority.—*Joslin v. Spangler*, 13 C. 492, 22 P. 804.

Effect of returning an execution unsatisfied in a criminal case to collect fine and costs, before the expiration of 90 days.—*Tate v. Peo.*, 25 C. 337, 53 P. 1051.

This section cited in an action against a sheriff for making a false return upon execution.—*Peo. v. Finch*, 19 A. 518, 76 P. 1122.

II. EXEMPTIONS.

Section.

- 3627. Wearing apparel exempt.
 - 3628. Other property exempt from execution.
 - 3629. Bicycle and sewing machine exempt.
 - 3630. Wages exempt—Proviso.
 - 3631. Pension money exempt.
 - 3632. Family of deceased or absconding debtor entitled to exemptions.
 - 3633. Death or desertion of head of family.
 - 3634. Officer selling exempted property—Penalty.
 - 3635. Debtor removing property from state—Exemption not applicable.
 - 3636. Chapter not applicable to justice courts.
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3627. Wearing apparel exempt.

SEC. 20. The necessary wearing apparel of every person shall be exempt from execution, writ of attachment and distress for rent.

Legislation. Sec. 3627. Act 1861 p. 272 § 33. R. S. p. 379 § 32. G. L. § 1433. G. S. § 1865.

CITATIONS.

Where property about to be levied upon is absolutely exempt it is not necessary for the debtor to claim his exemption, but the officer must know the fact and if he levy upon such property he is a trespasser.—*Sandberg v. Borstadt*, 48 C. 96, 109 P. 421. *Duncan v. Burchinell*, 14 A. 474, 61 P. 62.

3628. Other property exempt from execution.

SEC. 21. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale upon any execution or writ of attachment, or distress for rent, and such articles of property shall continue exempt while the family of such person are removing from one place of residence to another within this state:

First—Family pictures, school books, and library.

Second—A seat or pew in any house or place of public worship.

Third—The sites of burial of the dead.

Fourth—All wearing apparel of the debtor and his family; all beds, bedsteads and bedding, kept and used for the debtor and his family; all stoves and appendages, kept for the use of the debtor and his family; all cooking utensils; and all the household furniture not herein enumerated, not exceeding one hundred dollars in value.

Fifth—The provisions for the debtor and his family, necessary for six months, either provided or growing, or both; and fuel necessary for six months.

Sixth—The tools and implements, or stock in trade, of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value.

Seventh—The library and implements of any professional man, not exceeding three hundred dollars.

Eighth—Working animals to the value of two hundred dollars.

Ninth—One cow and calf, ten sheep, and the necessary food for all the animals herein mentioned for six months, provided or growing, or both; also, one farm wagon, cart or dray, one plough, one harrow, and other farming implements, including harness and tackle for team, not exceeding fifty dollars in value.

Provided, That nothing in this chapter shall be so construed as to exempt any property of any debtor from sale for the payment of any taxes whatever, legally assessed: *And, provided, further*, That no article of property above mentioned shall be exempt from attachment, or sale on execution for the purchase money for said article of property: *And, provided also, further*, That the tools, implements, working animals, books and stock in trade, not exceeding three hundred dollars in value, of any mechanic, miner or other person not being the head of a family, used and kept for the purpose of carrying on his trade and business, shall be exempt from levy and sale on any execution or writ of attachment while such person is a bona fide resident of this state.

[Head of family defined, see section 5541.]

[For homestead exemption see section 2950.]

[Cemeteries exempt, sections 1051-1052.]

Legislation. Sec. 3628. Act 1861 p. 272 § 34. Amended Act 1865

p. 100 §§ 4, 5. R. S. p. 380 § 33. G. L. § 1434. G. S. § 1866.

CITATIONS.

A defendant in attachment is entitled to select such articles as are suitable to his trade or business under subdivision 6th., and a failure on his part to make such selection is a waiver of his right thereto.—*Behymer v. Cook*, 5 C. 399.

If a debtor having two wagons conceals one and claims the other as exempt his selection is fraudulent.—*Yates v. Gransbury*, 9 C. 323, 12 P. 206.

The horse, wagon and harness of an unmarried man engaged in the business of assaying are exempt under the last proviso.—*Watson v. Lederer*, 11 C. 579, 19 P. 603.

Where the debtor's property is in excess of the exemption it is his duty to interpose his claim; where his property is less it is the duty of the officer to set aside the exempt property.—*Harrington v. Smith*, 14 C. 379, 23 P. 331.

The last proviso of this section includes the stock in trade of a merchant or shop-keeper.—*Martin v. Bond*, 14 C. 467, 24 P. 326. *Weil v. Nevitt*, 18 C. 14, 31 P. 488.

CITATIONS CONTINUED.

Each specific article of property is liable to levy to satisfy the vendor for the purchase money even though the same be otherwise exempt.—*Weil v. Nevitt*, 18 C. 14, 31 P. 488.

Being the head of a family does not itself entitle one to the benefit of an exemption; the other condition that he actually resides with his family is equally important. Where part of the property is exempt and part is not, the mere demand of the right to select is not equivalent to a selection.—*Schwartz v. Birnbaum*, 21 C. 23, 39 P. 417.

A portable engine with saw and lumber carriage used in the lumber business is exempt under the last proviso.—*Eckman v. Poor*, 38 C. 201, 87 P. 1088.

When all the property of the exemptioner is seized the levy is illegal. The duty of selection rests on the defendant only when he has property other than that which has been levied upon.—*Sandberg v. Borstadt*, 48 C. 96, 109 P. 420. *Ausrey v. Wright*, 4 A. 179, 35 P. 186. *Madera v. Holdrege*, 4 A. 126, 35 P. 52. *Eisenberg v. Burchinell*, 10 A. 459, 52 P. 220. *Duncan v. Burchinell*, 14 A. 473, 61 P. 61.

The right to an exemption is personal and can not be exercised with respect to partnership property.—*McCrimmon v. Linton*, 4 A. 420, 36 P. 300.

The words "other person" used in the last proviso include a married woman although her husband also has an exemption.—*Scott v. Mills*, 7 A. 156, 42 P. 1022.

This statute does not exempt property from a landlord's lien under Sec. 4013.—*Noxon v. Glaze*, 11 A. 504, 53 P. 828.

Where a debtor has no more than enough food for exempt animals for six months, an officer is bound to know that such food is exempt and the debtor is not required to claim his exemption at the time.—*Duncan v. Burchinell*, 14 A. 474, 61 P. 61.

3629. Bicycle and sewing machine exempt.

SEC. 22. The following property when owned by any citizen of the state of Colorado, in addition to the property now exempt by law, shall be exempt from levy and sale upon any execution or writ of attachment or distress for rent, and shall continue so exempt, to-wit: One bicycle and one sewing machine.

Legislation. Sec. 3629. Act 1899 p. 179 § 1, entitled, "An Act concerning exemptions."

CITATIONS.

In an action against a sheriff, plaintiff was qualified to testify as to the value of the sewing machine. The exemption statute need not be pleaded.—*Sandberg v. Borstadt*, 48 C. 96, 109 P. 420.

3630. Wages exempt from execution—Proviso.

SEC. 23. There shall be exempt from levy under execution or attachment or garnishment, sixty per cent. of the amount due for wages or earnings of any debtor at the time such levy is made under execution, attachment or garnishment of the same: *Provided*, Such debtor be, at the time of such levy under execution, attachment or garnishment, the head of a family or the wife of the head of the family, and such family resides in this state and is dependent, in whole or in part, upon such earnings for support; *Provided, further*, That when such wages or earnings do not exceed the sum of five (5) dollars per week, at the time such levy is made under execution, attachment or garnishment, then, all such wages or earnings shall be exempt.

[Head of family defined, see section 5541.]

[Fireman's pension fund not subject to levy. Section 6833.]

Legislation. Sec. 3630. Act 1903 p. 300 § 1 amending Act 1894 p. 49 § 1, which amended 1889 p. 463 § 1, which amended 1885 p. 262 § 1, The title of the original Act of 1885 read:

AN ACT

To Exempt Certain Wages and Earnings of Debtors From Levy and Attachment for Debt.

The reason of these frequent amendments to this section is because of the irreconcilable theories of those who favor stringent collection laws and of those who believe that creditors should protect themselves by declining credit to doubtful buyers. The exact changes can only be perceived by collation of the various Acts.

CITATIONS.

Exemption statutes should be liberally construed. The wages of debtors are exempt so long as they are capable of identification.—*Rutter v. Schumway*, 16 C. 97, 26 P. 322.

The amendment of 1894 did not deprive a debtor of the exemption to which he was entitled under the act amended.—*Hawkins v. Mosher*, 8 A. 32, 44 P. 764.

3631. Pension money exempt.

SEC. 24. All money received by any person, resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, or loaned by him, shall be exempt from execution or attachment, on seizure, by or under any legal process whatever, whether such pensioner shall be the head of a family or not.

[Exemption of insurance money. Section 3158.]

Legislation. Sec. 3631. Act 1887 p. 352 § 1, entitled:

AN ACT

To Exempt Pension Money from Levy and Attachment and Judicial Sale for Debt.

3632. Family of deceased or absconding debtor entitled to exemptions.

SEC. 25. When a debtor dies or absconds, and leaves his family the money exempted by this act, the same shall also be exempt by this act, the same shall also be exempt to his wife and children, or either of them.

Legislation. Sec. 3632. Act 1887 § 2, cited under § 3631.

3633. Death or desertion of head of family.

SEC. 26. Whenever in any case the head of the family shall die, desert, or cease to reside with the same, the said family shall be entitled to and receive all the benefit and privileges which are in this chapter conferred upon the head of a family residing with the same.

[Head of family defined. Section 5541.]

Legislation. Sec. 3633. Act 1861 p. 273 § 35. R. S. p. 380 § 34. G. L. § 1435. G. S. § 1867.

For allowance to widow or orphan see § 7223

CITATIONS.

This section cited in holding that a cause of action under sec. 3634 is not assignable.—*Mumford v. Wright*, 12 A. 218, 55 P. 746.

3634. Officer selling exempted property—Penalty.

SEC. 27. If any officer or other person, by virtue of any execution or other process, or by any right of distress, shall take or seize any of the articles of property hereinbefore exempted from levy and sale, such officer or person shall be liable to the party injured for three times the value of the property illegally taken or seized, to be recovered by action of trespass, with costs of suit.

Legislation. Sec. 3634. Act 1861 p. 273 § 36. R. S. p. 380 § 35. G. L. § 1436. G. S. § 1868

CITATIONS.

If exempt goods are taken during the temporary absence from home of the debtor he may nevertheless maintain an action under this section. Evidence in such action as to the process, the official character of defendant, and the kind of goods taken.—*Wymond v. Amsbury*, 2 C. 215.

A sheriff is not liable in case the defendant declines to designate the articles he desires to claim.—*Behymer v. Cook*, 5 C. 396.

Where the debtor conceals one wagon and claims another as exempt the sheriff is not liable for levying upon the one claimed.—*Yates v. Gransbury*, 9 C. 323, 12 P. 206.

A judgment against a constable could not be sustained where the constable has surrendered a sufficient portion of the property.—*Watson v. Lederer*, 11 C. 583, 19 P. 603.

In an action under this section, held that a certain letter from an absent debtor to his creditor did not amount to a waiver of his exemption rights under a levy.—*Harrington v. Smith*, 14 C. 379, 23 P. 331.

Judgment against a constable for treble damages sustained for failure to return certain specific exempt property demanded.—*Well v. Nevitt*, 18 C. 14, 31 P. 488.

A judgment creditor who ratifies the act of an officer who sells exempt property is liable under this section.—*Seerie v. Brewer*, 40 C. 300, 90 P. 508.

A complaint under this section need not refer to the statute.—*Madera v. Holdrege*, 4 A. 126, 134, 35 P. 52.

Where the levy includes property not exempt the debtor must point out the property claimed as exempt and unless the property is so designated the officer is not liable.—*Eisenberg v. Burchinell*, 10 A. 459, 52 P. 220.

CITATIONS CONTINUED.

A cause of action under this section is not assignable.—*Mumford v. Wright*, 12 A. 214, 55 P. 744.

Where demand is made within a reasonable time for a return of exempt property it is the duty of the officer, within a reasonable time to return it. Returning property after suit commenced does not relieve from liability under this section.—*Duncan v. Burchinell*, 14 A. 474, 61 P. 62.

3635. Debtor removing property from state—Exemption not applicable.

SEC. 28. If any debtor shall be engaged in removing his or her property from this state, such property shall not be exempt from levy and sale under execution or attachment; *Provided*, That nothing in this chapter contained shall be held to authorize the levying upon and selling the necessary wearing apparel or beds and bedding of any debtor, or of the family of any debtor, under any execution or attachment.

Legislation. Sec. 3635. Sec. 6 of Act 1864 p. 101. R. S. p. 383 § 43. G. L. § 1444. G. S. § 1869.

3636. Chapter not applicable to justice courts.

SEC. 29. Nothing in this chapter shall apply to judgments rendered and executions issued by justices of the peace, excepting such as relate to executions levied upon personal property.

Legislation. Sec. 3636. Act 1861 p. 273 § 37. R. S. p. 381 § 36. G. L. § 1437. G. S. § 1870.

III. CERTIFICATES OF LEVY.

Section.

3637. Sheriff file certificate of levy with recorder.

3638. Officer file certificate of attachment with recorder.

3639. Recorder file and record certificate.

3640. Form of certificate of levy.

3637. Sheriff file certificate of levy with recorder.

SEC. 30. When a writ of attachment or a writ of execution

is issued from the district court of one county to any sheriff or other officer of another county, and levied upon any real estate in such county, it shall be the duty of the officer making such levy to make a certificate thereof, and file the same in the recorder's office of the county where such real estate is situated; and until the filing of such certificate such levy shall not take effect as to creditors or bona fide purchasers without notice.

Legislation. Sec. 3637. Act 1861 p. 271 § 25. R. S. p. 378 § 24. G. S. § 1884. Not in G. L.

CITATIONS.

This and secs. 3639, 3640 cited in holding that the law prescribes no method of procedure where the realty is in the same county in which the judgment was rendered. It is not necessary to a valid levy that it be endorsed on the execution.—*Herr v. Broadwell*, 5 A. 470, 39 P. 70.

This section cited in holding that a sheriff alone is authorized to execute a decree of foreclosure of a mortgage.—*Blitz v. Moran*, 17 A. 260, 67 P. 1020.

A certificate having been filed two days subsequent to the appointment of a receiver no lien was acquired as against the receiver.—*Peo. v. Finch*, 19 A. 518, 76 P. 1122.

3638. Officer file certificate of attachment with recorder.

SEC. 31. When a writ of attachment is levied upon any real estate, in any case, it shall be the duty of the officer making the levy, to file a certificate of such fact with the recorder of the county where such land is situate; and from and after the filing of the same, such levy shall take effect, as to creditors and bona fide purchasers without notice, and not before.

Legislation. Sec. 3638. R. S. p. 378 § 25. Not in G. S. or G. L. It will be noted that § 3637 covers the same ground but is limited to writs out of the District Court.

3639. Recorder file and record certificate.

SEC. 32. It shall be the duty of the recorder of the proper county to file and record the certificates mentioned in the foregoing sections, in a book to be kept for that purpose; for which he shall be entitled to the same fees as for recording other papers,

to be paid by the plaintiff in such execution or attachment, and be taxed and collected by the sheriff as other costs.

Legislation. Sec. 3639. Act 1861 p. 271 § 27. R. S. p. 378 § 26. G. S. § 1886. Not in G. L.

3640. Form of certificate of levy.

SEC. 33. Such certificate may be in substance as follows:

STATE OF COLORADO, }
 _____ COUNTY. } ss.

I do hereby certify that by virtue of a certain writ of.....
 to me directed from the district court of.....county, in
 favor of.....against.....dated.....
 day of....., 18...., I did on this.....day of
, 18...., levy upon the following real estate (de-
 scribe it).

A. B., sheriff (or coroner) of.....county.

Legislation. Sec. 3640. R. S. p. 378 § 27. G. S. § 1886. Not in G. L.

CITATIONS.

This section cited in holding that the sheriff alone is authorized to execute a decree of foreclosure of a mortgage.—*Blitz v. Moran*, 17 A. 260, 67 P. 1020.

Where a certificate was filed two days subsequent to the appointment of a receiver no lien was acquired as against the receiver.—*Peo. v. Finch*, 19 A. 518, 76 P. 1122.

IV. SALE OF LANDS.

Section.

- 3641. Hours of sale—Notice—Penalty for wrongful selling—Irrregularity not affect sale.
- 3642. Certificate of purchase—Contents—Sheriff file duplicate—Record.
- 3643. Certificate of purchase assignable—Deed to assignee.
- 3644. Form of deed.

IV. SALE OF LANDS.

Continued.

Section.

3645. Assignment mentioned in deed.

3646. Sheriffs of Adams and Arapahoe counties perform duties of former sheriff of Arapahoe county.

3647. May execute deeds, etc.

3648. Deed evidence of compliance with law.

3641. Hours of sale—Notice—Penalty for wrongful selling—Irregularity not affect sale.

SEC. 34. No lands or tenements shall be sold, by virtue of any execution, aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun, the same day; nor unless the time and place of holding such sale have been previously advertised, for the space of twenty days, by publishing notices of the time and place thereof in some daily or weekly newspaper printed and published in the county where such lands and tenements are situate; or, if there be no such newspaper printed in the county, by posting such notices, printed or written, or partly printed and partly written, in three of the most public places in the county where the lands may be situated, specifying the names of the plaintiff and defendant in the execution; and in all such notices the lands or tenements to be sold shall be described, with reasonable certainty, by setting forth their number, or by some other appropriate description; and if any sheriff or other officer shall sell any lands or tenements, by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, the sheriff or other officer so offending shall, for every offense, forfeit and pay the sum of fifty dollars, to be recovered, with costs of suit, in any court of record in this state, by the person whose lands may be advertised and sold; *Provided, however,* That no such offense, nor any irregularity on the part of the sheriff or other officer having the execution, shall be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice of such irregularity.

Legislation. Sec. 3641. Act of 1861 p. 266 § 11. Amended by R. S. p. 372 § 11. G. L. § 1417. G. S. § 1849. The amendment brought in the newspaper advertisement. Before the amendment the notice was by posting only.

CITATIONS.

This section controls the time within which a sale may be made under the mechanic's lien law. (Sec. 4038).—*San Juan etc. Co. v. Finch*, 6 C. 224.

The law does not recognize fractions of a day and a notice published on February 16th, was twenty days prior to a sale on March 8th.—*Leppel v. Kus*, 38 C. 295, 88 P. 449.

3642. Certificate of purchase—Contents—Sheriff file duplicate—Record.

SEC. 35. Whenever any lands or tenements shall be sold, by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed of the premises sold, to give to the purchaser or purchasers of such lands or tenements a certificate in writing, describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in this chapter; and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

Legislation. Sec. 3642. Act 1861 p. 267 § 12. R. S. p. 373 § 12. G. L. § 1418. G. S. § 1850.

CITATIONS.

The legal title to property sold under execution remains in the debtor until the execution and delivery of the sheriff's deed.—*Hayes v. N. Y. G. M. Co.*, 2 C. 273. *Parxon v. Heron*, 41 C. 153 92 P. 15.

3643. Certificate of purchase assignable—Deed to assignee.

SEC. 36. Every certificate which shall be given by any officer to any purchaser, under the provisions of this chapter, shall be

assignable by endorsement thereon, under the hand of such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns; and every person to whom the same shall be so assigned shall be entitled to the same benefits therefrom in every respect that the person therein named would have been, if the same had not been assigned; and in case the lands mentioned in such certificate shall not be redeemed in pursuance of law, shall be entitled to a deed thereof.

Legislation. Sec. 3643. Act 1861 p. 268 § 18. R. S. p. 375 § 18. G. L. § 1424. G. S. § 1856.

CITATIONS.

Whether it was necessary to give notice to a sheriff of an assignment in order to preserve all rights thereunder considered but not decided.—*Breckenridge Merc. Co. v. Bailif*, 16 A. 556, 66 P. 1080.

3644. Form of deed.

SEC. 37. The deed to be executed by the officer to the purchaser, under the provisions of this chapter, shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form:

WHEREAS, A. B. did, at the..... term of the district court for the county of (as the case may be), recover a judgment against C. D. for the sum of dollars and cents, and costs of suit; upon which judgment an execution was issued, dated on the day of, A. D. 18...., directed to to execute; and by virtue of said execution the said levied upon the lands herein-after described, and the same were struck off and sold to , he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law.

Now, THEREFORE, Know all by this deed, that I,.....,

of the said county of....., in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said....., his heirs and assigns, the following described tract or tracts of land (describe the lands), to have and hold the said described premises, with all the appurtenances thereunto belonging, to the said....., his heirs and assigns, forever.

Witness my hand and seal this.....day of.....,

A. D. 18....

.....(L. &.)

[Conveyance by sheriff. Section 702.]

Legislation. Sec. 3644. Act 1861 p. 268 § 19. R. S. p. 376 § 19.
G. L. § 1425. G. S. § 1857

CITATIONS.

The recitals in a sheriff's deed are prima facie evidence that the provisions of the law in relation to the sale of land have been complied with; also of the assignment of the certificate of purchase.—*Bay State M. Co. v. Jackson*, 27 C. 142, 60 P. 574.

3645. Assignment, mentioned in deed.

SEC. 38. If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "Law," in the foregoing form, in substance as follows: "And the said....., having duly assigned his certificate of purchase to" (as the case may be).

Legislation. Sec. 3645. Act 1861 p. 269 § 20. R. S. p. 376 § 20.
G. L. 1426. G. S. § 1858.

CITATIONS.

Where the purchaser at a sheriff's sale assigned a certificate of purchase a recital of the assignment in the sheriff's deed was prima facie proof of the assignment.—*Bay State M. Co. v. Jackson*, 27 C. 142, 60 P. 574.

3646. Sheriffs of Adams and Arapahoe counties perform duties of sheriff of former Arapahoe county.

SEC. 39. The sheriffs in and for the counties of Adams and Arapahoe respectively, now serving or hereafter elected, are hereby empowered to execute all powers and perform all duties heretofore executed or performed by the sheriff of the former county of Arapahoe, state of Colorado, in relation to all certificates of sale or purchase and sheriff's deeds heretofore executed or provided by the laws of Colorado, to be executed by the sheriff of the former county of Arapahoe where the property mentioned in said certificates of sale or purchase, or affected by such deeds is now situated in the counties of Adams or Arapahoe.

Legislation. Sec. 3646. Act 1907 p. 568 § 1, entitled:

AN ACT

To Provide That the Sheriff [Sheriffs] of the Counties of Adams and Arapahoe Perform All Duties Heretofore Performed By the Sheriff of the Former County of Arapahoe In Relation to Certificates of Sale or Purchase and Sheriffs' Deeds Where the Property Affected By Such Instruments Is Now Situated In the County of Adams or the County of Arapahoe.

3647. May execute deeds, etc.

SEC. 40. Said sheriffs of the counties of Adams and Arapahoe respectively are hereby authorized and empowered to execute all such deeds and other instruments (as successors in office for such purposes to the former sheriff of the former county of Arapahoe, and are hereby made such successors as last aforesaid) as are necessary to carry into effect section one (1) of this act.

And all such instruments so executed by the said sheriffs of Adams or Arapahoe county as to property now existing in their respective counties shall be of equal validity, force and effect as if made by the former sheriff of the former county of Arapahoe during the existence of such former county.

[Section 1 referred to is section 3646.]

Legislation. Sec. 3647. Act 1907 § 2, cited under § 3646.

Secs. 3646 and 3647 are a local act passed on account of the cutting up of the original county of Arapahoe. See notes to § 1084.

3648. Deed, evidence of compliance with law.

SEC. 41. Any deed so executed shall be evidence that the provisions of the law in relation to sales of land upon execution were complied with, until the contrary shall be shown, and such deed shall be considered as conveying to the grantee therein named all the title, estate and interest of the defendant or defendants, in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be, but which deed shall not be construed to contain any covenant upon the part of the officer executing the same.

Legislation. Sec. 3648. Act 1861 p. 269 § 21. R. S. p. 376 § 21. G. L. § 1427. G. S. § 1859

CITATIONS.

The recitals in a sheriff's deed are prima facie evidence of compliance with the law and of the assignment of a certificate of purchase.—*Bay State M. Co. v. Jackson*, 27 C. 142, 60 P. 574.

V. SALE OF CHATTELS.

Section.

3649. Ten days' notice of sale of chattels.

3650. Forthcoming bond—Conditions.

3651. Breach of bond—Officer levy on property of surety—Sale.

3649. Ten days' notice of sale of chattels.

SEC. 42. No goods or chattels shall be sold by virtue of any execution unless previous notice of such sale shall have been given for at least ten days successively in the same manner as required in the sale of real estate upon execution.

Legislation. Sec. 3649. Act 1861 p. 272 § 30 as amended by R. S. p. 379 § 29. G. L. § 1430. G. S. § 1862.

3650. Forthcoming bond—Conditions.

SEC. 43. Whenever a sheriff or other officer shall have levied an execution, issued out of any court of record, upon the personal property of a defendant, or shall be about to make such levy, and

the defendant be desirous of retaining the same in his possession, such sheriff shall take a bond from such defendant, with security, that the property shall be forthcoming or delivered at such time and place as shall be named in the condition, and that the same shall not be disposed of nor injured; and a bond so taken shall not be considered void, as taken by color of office.

Legislation.. Sec. 3650. Act 1861 p. 272 § 31. R. S. p. 379 § 30. G. L. § 1431. G. S. § 1863

3651. Breach of bond—Officer levy on property of surety—Sale.

SEC. 44. Where bonds shall be taken by a sheriff for the forthcoming and delivery of property, and the defendant or his security shall not return the property named in the said bond conformably to the condition thereof, the officer having such execution may proceed to execute the same in the same manner as if no levy had been made; and in case the defendant's property, or a sufficiency thereof, cannot be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond, and the property which may be so taken may be sold, by giving notice thereof, as prescribed in section thirty of this act, and no future delivery bond shall be allowed.

[Section 30 mentioned in last above section is section 3649, the reference seems to be an error in enrolled bill.]

Legislation. Sec. 3651. Act 1861 p. 272 § 32. R. S. p. 379 § 31. G. L. § 1432. G. S. § 1864

VI. REDEMPTIONS.

Section.

3652. Redemption by defendant or representatives.

3653. Redemption by creditors.

3654. Land struck off to creditors—Bid—Surplus—Successive redemptions.

3655. Judgment creditor may redeem property in parcels as sold.

3656. Commission on excess—Duplicate certificate of purchase filed.

3657. Redemption of land sold under mortgage.

3658. Certificate of redemption—Filed and recorded—Fees.

3652. Redemption by defendant or representatives.

SEC. 45. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within six months from such sale, to redeem such lands or tenements by paying to the purchaser thereof, his executors, administrators or assigns, or the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid if purchased by the plaintiff in the execution, together with the interest thereon at the rate of ten per cent. from the time of such sale; and on such sum being paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

Legislation. Sec. 3652. Act 1861 p. 266 § 13, amended by Act 1864 p. 100 § 1. R. S. p. 373 § 13. G. L. 1419. G. S. § 1851.

The Amendment of 1864 cut down the debtors redemption period from twelve, to six months.

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Payment to the sheriff abrogates the sale and a sheriff's deed subsequently executed will be cancelled.—*Colo. Mfg. Co. v. McDonald*, 15 C. 518, 25 P. 712. *Floyd v. Sellers*, 7 A. 495, 44 P. 372.

A judgment creditor has no right to redeem after the expiration of six months from the date of sale and his assignee has no greater rights.—*Roose v. Gove*, 32 C. 523, 77 P. 246.

Redemption may be made by judgment debtor where the judgment was against him and another notwithstanding he may have had no interest in the property at the time of the sale.—*Floyd v. Sellers*, 7 A. 495, 44 P. 372.

The right of redemption is purely a statutory right and does not exist without the statute.—*Paddack v. Staley*, 13 A. 369, 58 P. 363.

This section cited in holding that the sheriff alone is authorized to execute a decree of foreclosure of mortgage.—*Blitz v. Moran*, 17 A. 259, 67 P. 1022.

3653. Redemption by creditors.

SEC. 46. After the expiration of six months, and at any time before the expiration of nine months from the sale of any lands or tenements under the provisions of the preceding sections

hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following: Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same, and thereupon said officer shall endorse upon the back of said execution a levy upon the land or tenements which said judgment creditor may wish to redeem; and said judgment creditor shall pay to said officer in whose hands he shall have placed his execution, as aforesaid, the amount of money for which said premises shall have been sold, with ten per cent. per annum interest thereon from the date of such sale, for the use of the purchaser thereof, his executors, administrators or assigns, upon payment of which said officer shall file in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof by said judgment creditor, under such execution, and shall advertise and offer the same for sale, under and by virtue of said execution, in the same manner that other lands are required to be advertised and exposed to sale on execution in other cases.

[Lands sold under mortgage may be redeemed by creditor, section 3657.]

Legislation. Sec. 3653. Act 1861 p. 267 § 14. Amended by Act 1864 p. 100 § 2. R. S. p. 373 § 14. G. L. § 1420. G. S. § 1852.

Before the Amendment the debtor had twelve months to redeem and the creditor three months, making the total redemption period fifteen months.

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This section cited in holding that a creditor's bill to set aside a conveyance did not involve a freehold.—*Paddock v. Staley*, 24 C. 191, 49 P. 281.

The rate of interest of 10 per cent was not repealed by sec. 3162.—*O'Mahoney v. Peo.*, 24 C. 526, 52 P. 796.

Where the plaintiff in an execution was the purchaser and subsequently accepted the redemption money paid by a judgment creditor, he could not thereafter question the regularity of the redemption proceedings.—*Roose v. Gove*, 32 C. 523, 77 P. 246. *Hartsack v. John Wright Hardware Co.*, 16 A. 49, 64 P. 245.

If the sheriff makes a mistake in distributing the money it will not affect the redemption, the creditor not ratifying the mistake.—*Brown v. Bell*, 46 C. 172, 103 P. 383.

The effect of redemption by a judgment creditor is the re-

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vival of his own lien; other liens which were extinguished by the sale remain extinct notwithstanding they may have been superior in point of time.—*Floyd v. Sellers*, 7 A. 503, 44 P. 375.

There are no prior rights of redemption as between judgment creditors.—*Paddack v. Staley*, 13 A. 363, 58 P. 363.

3654. Land struck off to creditor—Deed—Higher bid—Successive redemptions.

SEC. 47. Any judgment creditor, having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money, so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest, as last aforesaid, the excess over and above the amount of the same shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser, in the manner hereinbefore prescribed, for a deed of said land so sold, within sixty days from the date of such sale, unless the same shall be redeemed in the meantime, in the manner herein prescribed, by some other judgment creditor; and if such lands shall be redeemed from said second purchaser the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as hereinbefore required in the case of the first redemption; and such lands may be successively redeemed, within every period of sixty days, as long as there shall be a judgment creditor disposed to redeem the same, on the terms and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold, to the

last purchaser, in like manner as other deeds for lands sold on execution are made.

Legislation. Sec. 3654. Act 1861 p. 267 § 15. R. S. p. 374 § 15. G. L. § 1421. G. S. § 1853.

CITATIONS.

The right to redeem is given without reference to the character of the judgment or the manner in which it was obtained and whether it is or is not a lien upon the estate to be redeemed.—*Howard v. Sherwood*, 1 C. 117.

A purchaser at a sheriff's sale as well as a party redeeming is bound at his peril to inquire whether the court had jurisdiction.—*Union Iron Works v. Bassick M. Co.*, 10 C. 24, 14 P. 54.

This section cited in considering the effect of a redemption by judgment creditor.—*Roose v. Gove*, 32 C. 523, 77 P. 246.

If no higher bid than the redemptioner's is made the land is struck off and sold to him and in that case no other redemption is allowed.—*Floyd v. Sellers*, 7 A. 503, 44 P. 375.

3655. Judgment creditor may redeem part or parcels as sold.

SEC. 48. Any judgment creditor or creditors may redeem the whole, or any part or portion, of the lands or tenements previously sold upon execution; *Provided*, Such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

Legislation. Sec. 3655. Act 1861 p. 268 § 16. R. S. p. 375 § 16. G. L. § 1422. G. S. 1854.

3656. Commission on excess—Duplicate certificate of purchase filed.

SEC. 49. No commission upon the amount of the redemption money paid, in any case, shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises, on the excess made over and above the amount of said redemption money and interest. The duplicate copy of the certificate of purchase required in the twelfth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution are situated.

[The twelfth section mentioned in last above section is section 3642.]

Legislation. Sec. 3656. Act 1861 p. 268 § 17. R. S. p. 375 § 17. G. L. § 1423. G. S. § 1855.

3657. Redemption of land sold under mortgage.

SEC. 50. In all cases where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors or administrators, to redeem the same in the manner prescribed in this act for the redemption of lands sold by virtue of executions issued upon judgments at common law; and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common law.

Legislation. Sec. 3657. Act 1861 p. 270 § 24. R. S. p. 377 § 23. G. L. § 1428. G. S. § 1860.

CITATIONS.

In cases where redemption from sales is allowed under this section it is within the discretion of the court to fix the time within which the amount found due shall be paid before the order for sale takes effect.—*Denver B. & M. Co. v. McAllister*, 6 C. 265.

In a judicial foreclosure of a mortgage the sheriff alone is authorized to execute a decree of foreclosure and sell the land.—*Blitz v. Moran*, 17 A. 259, 67 P. 1022.

3658. Certificate of redemption—Filed and recorded—Fees.

SEC. 51. In all cases of redemption of lands from sale, had under any attachment, judgment, order or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or person from whom said redemption takes place, to make out an instrument in writing, under his hand and seal, evidencing said redemption, which shall be recorded in the recorder's office of the proper county, in manner as other writings affecting the title to real estate are filed and recorded, and which recording shall be paid for by the party redeeming.

Legislation. Sec. 3658. Act 1861 p. 271 § 29. R. S. p. 379 § 23. G. L. § 1429. G. S. § 1861.

CITATIONS.

A redemption by the defendant aorogates the sale though the sheriff has not canceled the certificate of purchase nor executed the certificate of redemption as provided in this section and

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though he has subsequently executed a deed to the purchaser.—*Colo. Mfg. Co. v. McDonald*, 15 C. 518, 25 P. 712.

This section cited in holding that the sheriff alone is authorized to make sale on the foreclosure of mortgage.—*Blitz v. Moran*, 17 A. 259, 67 P. 1022.

VII. DEATH OF PARTIES.

Section.

3659. Death of judgment debtor—Execution—Notice to administrator.
3660. Death of judgment debtor—Execution issue after one year.
3661. Death of judgment plaintiff—Executors or administrators proceed to collect—Letters filed.
3662. Lien of judgment not abated by death of plaintiff.
3663. Executor or administrator buy in land on execution.

3659. Death of judgment debtor—Execution—Notice to administrator.

SEC. 52. Whenever a judgment is obtained in any court of record in this state, against any person or persons who has or shall, after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives. *Provided, however*, The plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice, in writing, of the existence of said judgment, before the issuing of execution. *And, provided, further*, That no execution shall issue until after the expiration of twelve months from the death of such deceased person or persons.

Legislation. Sec. 3659. Act 1861 p. 273 § 38. R. S. p. 381 § 37. G. L. § 1438. G. S. § 1871.

3660. Death of judgment debtor—Execution issue after one year.

SEC. 53. When any judgment shall have become a lien, as

aforesaid, and the defendant happen to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered shall not be delayed or suspended by reason of the non-age of any heir or heirs of such defendant; but no execution shall issue upon such judgment until the expiration of one year after the death of such defendant, nor shall any law of this state which gives no preference to the claims of a creditor of a deceased debtor, be so construed as to impair or affect the lien of any judgment as aforesaid.

[When judgment rendered after death, no lien. Code section 248, p. 121.]

Legislation. Sec. 3660. Act 1861 p. 265 § 2. R. S. p. 371 § 2. G. L. § 1410. G. S. § 1842.

CITATIONS.

Notwithstanding the death of one of the judgment creditors execution may issue upon the property of a survivor.—*Christ v. Flannagan*, 23 C. 141, 46 P. 684.

3661. Death of judgment plaintiff—Executors or administrators proceed to collect—Letters filed.

SEC. 54. The collection of the judgments of courts of record shall not be delayed or hindered by the death of the plaintiff or person in whose name the judgment shall exist, but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists; after which execution may issue and proceedings be had thereon in the name of the executor or administrator as such, in the same manner that could or might be done, or had, if the judgment exists or remains in the name and in favor of the executors or administrators, in his, her or their capacity as such executor or administrator.

[Party dying after verdict, etc., section 248, Code.]

Legislation. Sec. 3661. Act 1861 p. 274 § 41. R. S. p. 382 § 40. G. L. § 1441. G. S. § 1872.

CITATIONS.

The right of an assignee of a judgment to take out execution after death of the original judgment creditor is not impaired by this section.—*Christ v. Flannagan*, 23 C. 143, 46 P. 684.

3662. Lien of judgment not abated by death of plaintiff.

SEC. 55. The lien created by law on property shall not abate or cease by reason of the death of any plaintiff or plaintiffs, but the same shall survive in favor of the executor or administrator of the testator or intestate, whose duty it shall be to have the judgment enforced in the manner aforesaid.

Legislation. Sec. 3662. Act 1861 p. 275 § 42. R. S. p. 382 § 41. G. L. § 1442. G. S. § 1873.

3663. Executor or administrator buy in land on execution.

SEC. 56. When it shall be necessary in order to secure the collection of any judgment in favor of any executor or administrator, it shall be the duty of such executor or administrator to bid for and become the purchaser of real estate, at sheriff's sale, which real estate so purchased shall be assets in his hands, and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale paid over and accounted for as other moneys in his hands.

[No execution issue against decedent, minor or mental incompetent. Section 7209.]

Legislation. Sec. 3663. Act 1861 p. 275 § 43. R. S. p. 382 § 42. G. L. § 1443. G. S. 1874.

VIII. KANSAS, PEOPLES, MINERS' COURTS.**Section.**

3664. Revival of judgments of peoples and miners courts.

3665. Certified transcript of judgment or decree—Justice render judgment on.

3666. Kansas courts—Miners' courts, clubs—Judgments legalized.

3667. Judgments prior to August 15, 1862.

3664. Revival of judgments of people's and miners' courts.

SEC. 57. Any judgment or decree of the so-called miners', people's, or other courts, which has been or shall be legalized and confirmed by act of the legislature, and which remains unsatisfied in whole or in part, may be revived by writ of scire facias in the

district court of the county where the same was rendered, and the same proceedings had thereupon as in other cases.

Legislation. Sec. 3664. R. S. p. 384 § 53. G. L. § 1454. G. S. § 1887.

3665. Certified transcript of judgment or decree—Justice render judgment on.

SEC. 58. Whenever any transcript of any judgment or decree, certified to by the officer before whom the same was rendered, shall be filed with any justice of the peace, where the amount claimed shall not exceed one hundred dollars, such magistrate shall enter judgment thereon for the amount which shall appear due, subject to the like limitations and appeal, as in other cases.

Legislation. Sec. 3665. R. S. p. 385 § 54. G. L. § 1455. G. S. § 1888.

3666. Kansas courts—Miners' courts, clubs—Judgments legalized.

SEC. 59. All judgments and decisions rendered by any of the so-called miners' courts, or miners' clubs, or claim clubs, or people's courts, or Kansas courts, according to the rules and regulations adopted by any neighborhood or mining district, within what are now the limits of the state of Colorado, when both parties made an appearance, or had notice according to such rules, and all the executions, writs, processes, sales or proceedings growing out or resulting from the same, are hereby confirmed and legalized.

Legislation. Sec. 3666. R. S. p. 385 § 55. G. L. 1456. G. S. § 1889.

3667. Judgments prior to August 15. 1862.

SEC. 60. The foregoing section shall be deemed to apply to all such judgments, decrees, writs, processes and sales, had or rendered at any time prior to the fifteenth day of August, A. D. 1862.

Legislation. Sec. 3667. R. S. p. 385 § 56. G. L. § 1457. G. S. § 1890.

CHAPTER LXXVII.

JURORS.

- I. QUALIFICATIONS AND EXEMPTIONS OF JURORS.—3668-3676.
- II. SELECTION AND SUMMONING OF JURORS.—3677-3688.
- III. CHALLENGES AND TRIALS THEREOF.—3689-3694.
- IV. GRAND JURORS.—3695-3701.
- V. FEES.—3702-3705.
- VI. JURY COMMISSIONER.—3705-A.-3705-O.

I. QUALIFICATIONS AND EXEMPTIONS OF JURORS.

Section.

- 3668. Persons competent to be jurors.
- 3669. Inhabitants of county competent.
- 3670. Persons exempt from service—Professional gambler ground for challenge to poll.
- 3671. Firemen exempt—How shown.
- 3672. Firemen attend meetings and calls.
- 3673. Firemen entitled to certificate.
- 3674. Exemption—National guard.
- 3675. Railroad employes—Illness—Removal from county.
- 3676. Seventh day adventists exempt.

3668. Persons competent to be jurors.

SECTION 1. All male inhabitants of this state of the age of twenty-one years, who are citizens of the United States or have declared their intention to become such citizens, and who have not been convicted of felony, shall be competent to serve as grand and petit jurors, in all courts and judicial proceedings in this state;*

[For jury trials before justice of peace see sections 3750-3754.]

and no county commissioners, judges, or other state or county officers, shall, in the selection of grand or petit jurors, or in the impaneling of petit jurors, to try any cause, whether civil or criminal, discriminate against, reject or challenge any person, otherwise qualified, on account of such person speaking the Spanish or Mexican language and not being able to understand the English language.

Legislation. Sec. 3668. Act 1885 p. 263 § 1, amending G. S. § 1891. The amendment added all that follows the star.

The Act of 1861 p. 334 § 1 required jurors to be "white, male, taxable inhabitants," and exempted persons suffering under physical disability. The Act of 1867 p. 69 § 1 struck out the word "taxable" and changed the whole frame of the section. R. S. p. 387 § 1 added the clause as to gamblers. The G. L. revision covered the text by two sections, 1460, 1461.

CITATIONS.

Inability to speak the English language was not necessarily a disqualification.—*Trinidad v. Simpson*, 5 C. 65. *In re Allison*, 13 C. 533, 22 P. 822.

It was proper to excuse a juror who was not a citizen of the United States nor declared his intention.—*Babcock v. Peo.*, 13 C. 519, 22 P. 818.

A judge may excuse a juror for causes not enumerated in the statute.—*Peo. v. Dist. Court*, 29 C. 87, 66 P. 1070.

3669. Inhabitants of county competent.

SEC. 2. On the trial of any suit in which a county may be interested the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

[Disqualification of juror for conviction of felony. Section 2027.]

Legislation. Sec. 3669. R. S. p. 168 § 7. G. L. § 434. G. S. § 1892.

3670. Persons exempt from jury service—Professional gambler ground for challenge to poll.

SEC. 3. State and county officers, judges and clerks of courts, justices of the peace, and constables, attorneys and counselors at law,* persons engaged as officers in the active management of railroad, telephone and telegraph companies, and editors and reporters when employed actively upon newspaper publications* and persons

who are sixty years of age, shall not be required to serve as jurors, if he or they shall ask to be excused from such service. No person shall be required to serve as a juror except in the county where he resides, or in the county to which the county of his residence may be attached for judicial purposes. That one is a professional gambler or that he keeps a house, room or other place in which gambling is carried on, shall be a ground of challenge to the poll.

[See Code, Chapter 13, Formation of Jury.]
[For embracery see section 1745.]

Legislation. Sec. 3670. Act 1905 p. 281, amending G. S. § 1898. Act 1877, G. L. § 1461. The amendment consisted in the addition of the words between the stars.

By Act of 1865 p. 71, gamblers were declared ineligible as jurors.

3671. Firemen exempt—How shown.

SEC. 4. That any person who is now or shall hereafter become a working member of any fire engine, hook and ladder, or hose company, or volunteer organization for the extinguishment of fires, now existing and under the control of the corporate authorities of any city or incorporate town within this state, or of any such organization which may hereafter be organized under and subject to the authorities of any city or town as aforesaid, shall, during the time he may continue a working member of such organization, be exempt from serving as a juror, and from the payment of a poll tax; and any member who shall have been a working member of any such organization in any city or town as aforesaid, and shall have faithfully discharged his duties as such for the term of five (5) years, shall be forever exempted from serving as jurors, and from the payment of a poll tax; *Provided, however,* That no person shall be so exempted, as above specified, unless he produce the certificate, under oath, of the foreman of his company, which certificate shall set forth that such person has been for five years last past bona fide a working fireman, and not a so-called honorary member, of a regularly organized fire company; *And, provided, further,* That no person shall be exempt from duty as a juror, unless he produce a certificate, under oath, of the foreman of his company, which certificate shall set forth that the person therein named is an acting and working fireman of the company to which he belongs; and such certificate shall entitle the person therein

named to exemption from service as a juror, should such person wish to avail himself of such exemption; *And, provided, further,* That the judge before whom such certificate is presented may examine such person, under oath, touching his services as such fireman, and, if he be thereupon satisfied that such person is a working fireman within the true intent of this chapter, he shall be discharged from jury duty.

Legislation. Sec. 3671. G. L. § 1213, as amended by Act 1879 p. 72 § 1. G. S. § 1899. The amendment consisted in the addition of the three provisos. By Act of 1887 p. 74 firemen became exempt from jury duty.

3672. Firemen attend meetings and calls.

SEC. 5. No person shall hereafter be entitled to the exemption from jury duty, or from the payment of a poll tax, extended by the laws of this state to working members of any fire company, or volunteer organization for the suppression of fires, unless such person shall attend at least four regular meetings of the company or organization to which he belongs each year; nor unless he either serves with such company when called out in case of fire, or is regularly excused from such service at the time by the foreman of said company or organization.

Legislation. Sec. 3672. Act 1887 p. 268 § 1, entitled:

AN ACT

Limiting the Exemption of Firemen From the Payment of Poll Tax, and From Service Upon Juries in This State.

3673. Firemen entitled to certificates.

SEC. 6. That any person who has served in any company for the term of five (5) years, as provided in the preceding section, shall be entitled to receive from the foreman of the company of which he may have been a member a certificate to that effect, and on the presentation of such certificate to the clerk or recorder of the proper city or town, it shall be the duty of such clerk or recorder to file the same in his office, and to give his certificate under the county seal to the person entitled thereto, setting forth the name of the company of which such person may have been a member, and the duration of such membership, and such certifi-

cate shall be received in all courts and places in the state as evidence that the person legally holding the same is entitled to the exemption hereinbefore mentioned; *Provided*, That nothing herein contained shall be so construed as to diminish any privilege now allowed by any law of this state to any member of any fire company in this state, but shall be considered as conferring additional privileges.

Legislation. Sec. 3673. Act of 1877. G. L. § 1214. G. S. § 1900.

3674. Exemption—National guard.

SEC. 7. Every member of the Colorado national guard shall be exempt from jury duty during his term of service, and every such person who shall have so served three years and been honorably discharged shall forever after be exempt from involuntary jury duty.

Legislation. Sec. 3674. Act 1879 p. 138 § 21. G. S. § 1901. This section is duplicated by §§ 4387, 4439.

3675. Railroad employees—Illness—Removal from county.

SEC. 8. Nor shall any engineer, conductor or superintendent actually employed by any railroad company be required to serve on any jury in this state, or any person who on his oath before the court shall state that the condition of his own health or the illness or death of a member of his immediate family demands his absence from such court, setting forth the circumstances, so that in all cases the court may judge of the sufficiency thereof. That after a resident of any county has been selected upon any petit or grand jury, for any term of court to be holden in said county, and if before such term of court shall convene he shall remove from such county with intention of residing without such county, then he shall be excused from such service as such juror, * * and it shall be unlawful for any fine to be assessed or adjudged against him therefore: *And, Provided, further*. That any person who shall be necessarily beyond and without the state during any term of court, then he shall be entitled to the same exemption from service and fine as is above provided.

Legislation. Sec. 3675. Act 1876 p. 80 § 2, amending R. S. p. 387 § 2. G. S. § 1902. Not in G. L.

The act of 1876 p. 80 § 1 exempts "teachers in the public schools" in the form of an amendment to R. S. p. 387 § 2.

Another section with the same number and on same page, but belonging to a separate Act made non-eligible, jurors who had served at the next preceding term, but that section is now superseded by § 3690.

Act of 1874 p. 176 § 20 exempted physicians by adding that word to the exempted list in R. S. p. 387 § 2. But when by Act of 1877 G. L. § 1461. G. S. § 1898 and that section substituted by the 1905 Act (§ 3670), all the re-enactments leaving out the words "physicians" and "teachers," it seems that physicians and teachers are no longer specifically exempt from jury duty. But registered pharmacists are exempt by § 4912.

3676. Seventh day adventists exempt.

SEC. 9. That any person who conscientiously observes the seventh day of the week, commonly called Saturday, as the Sabbath day, and refrains from doing secular labor upon that day, shall not be required to serve as a juror, or as a witness, on such day, if he or they shall ask to be excused from such service.

[Registered pharmacists exempt from jury service, see section 4912.]
[Officers of state reformatory exempt from jury duty. Section 6253.]

Legislation. Sec. 3676. Act 1891 p. 254 § 1, entitled:

AN ACT

To Provide for the Selection and Qualification of Grand and Petit Jurors and to Amend Sections 13, 16, 18, 19 and 21 of Chapter LXI of the General Statutes of the State of Colorado, Entitled "Jurors," to Provide Penalties for Violations of This Act, and to Repeal All Acts and Parts of Acts in Conflict Herewith.

II. SELECTION AND SUMMONING OF JURORS.

Section.

- 3677. Classification of counties for selection of jurors.
- 3678. Counties classified by vote polled.
- 3679. Box for ballots kept by clerk of court.
- 3680. Clerk draw jury in presence of sheriff—Venire—Talesmen.
- 3681. Selection of jurors in attached counties.
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- 3685. Open venire issue when commissioners fail to return list—Penalty for neglect.
- 3686. How jurors summoned.
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- 3688. Juror failing to appear—Penalty.

3677. Classification of counties for selection of jurors.

SEC. 10. For the purpose of selecting jurors to serve in courts of record, the several counties in the state of Colorado shall be divided into four classes: Counties having ten thousand or more voters shall constitute the first class. Counties having three thousand, and not exceeding ten thousand voters, shall constitute the second class. Counties having one thousand, and not exceeding three thousand voters, shall constitute the third class. Counties having less than one thousand voters shall constitute the fourth class. The board of county commissioners in each county in this state, sixty days or more before the time appointed for holding a district court in such county, shall select from the inhabitants of such county having the qualifications prescribed by law and not exempt from jury duty, competent persons to serve as jurors in number and manner following, that is to say: In counties of the first class, there shall be selected eight hundred names. In counties of the second class, three hundred names. In counties of the third class, two hundred names. In counties of the fourth class, one hundred names. The county treasurers of the respective counties shall, at the request of the board of county commissioners, deliver to said board, free of charge, in alphabetical order, a list of male inhabitants of their county who pay taxes, and the board of commissioners shall select names of jurors from residents of said county, so far as practicable from such list, but shall have the right to add thereto the names of persons qualified for jury duty under the laws of this state until the full complement of names are selected; which names when so selected shall be immediately certified by the clerk of the board of commissioners to the clerk of the district court of said county; or if such county shall be attached to another for judicial purposes, then in the manner hereinafter specified: *Provided*. That the board of county commissioners in each county so attached shall be required to select only one-half the number of names so specified in the above classification.

[Venire not necessary in criminal cases. Section 1975.]

Legislation. Sec. 3677. Act 1891 p. 248 § 1, amending G. S. § 1903 Act of 1877, G. L. § 1462, which read:

1462. Sec. 3. At the regular meeting of the board of county commissioners in each county, sixty days or more be-

for the time appointed for holding a district court in such county, the board shall select of the inhabitants of the county having the qualifications prescribed in this act, and not required by law to serve as jurors, competent persons to serve as jurors in number as follows, to wit:

In counties having three thousand or more voters, two hundred names.

In counties having fifteen hundred, and not exceeding three thousand voters, one hundred and fifty names.

In counties having five hundred, and not exceeding fifteen hundred voters, one hundred names.

In counties having less than five hundred voters, seventy-five names.

Which names when so selected shall be immediately certified to the district clerk of the same county, or if such county shall be attached to another for judicial purposes, then to the district clerk of the county to which such county shall be so attached.

The words "not required" should have read "not exempted."

CITATIONS.

Section 9 of the act of 1891 requiring jury fee to be advanced in the county court in certain counties was repugnant to sec. 28, Art. 6 of the constitution.—*Pitkin County v. Bank*, 24 C. 125, 48 P. 1043. (Affirming 6 A. 424, 40 P. 894).

The statutes for the summoning or drawing of jurors are directory in their nature and do not furnish an exclusive method.—*Giano v. Peo.*, 30 C. 26, 69 P. 505. *Walt v. Peo.*, 46 C. 139, 104 P. 90.

The entire statute relates to grand as well as petit jurors.—*Imboden v. Peo.*, 40 C. 154, 90 P. 612.

3678. Counties classified by vote polled.

SEC. 11. The aggregate of the votes polled for the candidates to any state or county office at the general election held next before the time of selecting persons to serve as jurors, as provided in section three, shall sufficiently indicate the number of voters in the county within the meaning of this act. The board of county commissioners shall determine the candidates and the office upon which such computation shall be made.

[Section 3 referred to is section 3677.]

Legislation. Sec. 3678. Act 1877 G. L. § 1463. G. S. § 1904.

3679. Box for ballots to be kept by clerk of court.

SEC. 12. The clerk of the district court shall keep a box of

suitable dimensions, having two compartments, each of which shall be closed with a lid or cover and fastened with lock and key. An opening shall be made in each of said lids not exceeding two inches in length, and one-fourth of an inch in width, which shall be for the reception of ballots. The said box shall remain in the possession of the district clerk, and shall not be opened except at, in the time and in the manner hereinafter specified. The keys to the same shall be kept by the sheriff of the county.

Legislation. Sec. 3679. Act 1877 G. L. § 1464. G. S. § 1905.

3680. Clerk draw jury in presence of sheriff—Venire—Talesmen.

SEC. 13. The clerk of the district court shall write the names certified to him as aforesaid on ballots, one name on each ballot, and place such ballots in one compartment of the said box. At least thirty days prior to the term of the court, and afterwards as often as the court shall order, the clerk of the district court shall call to his assistance the sheriff of the county, and in the presence of the sheriff draw by chance from the compartment of the said box in which the names have been placed, a sufficient number of grand and petit jurors for the next term of the district court of such county. When so drawn the ballots shall be placed in the other compartment of the said box. In case a jury is required in the county court, to try either civil or criminal cases, the judge of the county court shall so notify the clerk of the district court in writing, stating in such notice the number of jurors desired, whereupon the clerk of the district court shall call to his assistance the sheriff, and shall draw from the box the requisite number of jurors, and shall certify their names to the clerk of the county court, who shall then issue a venire to the sheriff to summon the jurors so drawn, and make it returnable, as the said county court may order, which court shall, so far as possible, fix the trials of jury cases for some definite time, and shall try them successively by the same panel of jurors, so far as is practicable, and when the trials are over he shall discharge such jury from further attendance. Talesmen may be secured in the county court in the same way as they are in the district court. After said jurors are drawn

and their names certified to the clerk of the county court, as provided in this section, all laws, proceedings and practice applicable to jurors in the district courts, shall apply to jurors in county courts.

Legislation. Sec. 3680. Act 1891 p. 249 § 2, amending G. S. § 1906. Act 1877 G. L. § 1465, which read:

Sec. 6: The clerk of the district court shall write the names certified to him as aforesaid on ballots, one name on each ballot, and place such ballots in one compartment of the said box. At least thirty days prior to the term of court, the district clerk shall call to his assistance the sheriff of the county, and in the presence of the sheriff, draw by chance from the compartment of the said box in which the names have been placed, a sufficient number of grand and petit jurors for the next term of the district court of such county. When so drawn the ballots shall be placed in the other compartment of the said box.

CITATIONS.

A panel drawn less than thirty days before the term need not be discharged for that reason.—*Babcock v. Peo.*, 13 C. 517, 22 P. 818.

This section cited in holding sec. 9 of the act of 1891 unconstitutional.—*Pitkin County v. Bank*, 24 C. 125, 48 P. 1043. (Affirming 6 A. 424, 40 P. 894).

This section cited in considering the selection of a jury in a condemnation case.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 99, 66 P. 904.

The statutes relative to the selection of jurors do not make the method therein provided exclusive.—*Walt v. Peo.*, 46 C. 139, 104 P. 90.

3681. Selection of jurors in attached counties.

SEC. 14. Whenever two or more counties are attached to each other, for judicial purposes, the board of commissioners, in each of the counties so attached, shall select jurors according to the provisions of this act, and the clerk of said board shall certify the names of jurors so selected to the clerk of the district court, of the county in which said court is to be held, and the said clerk of the district court shall keep the names so certified, from each county, in a separate box, and the sheriff of the county where said court is to be held, shall keep the keys to said boxes. It shall be the duty of the judge of such district court, at least thirty days prior to every term of such court, to apportion the grand and petit jurors

required by law to be summoned to attend at such term among the several counties, so attached, having reference to the population of the several counties respectively. Thereupon, jurors shall be drawn by the clerk in the presence of the sheriff of the county where said court is to be held, in the manner hereinbefore specified, according to such direction and apportionment made by the judge, and writs or venire facias for summoning such jurors shall be issued as in other cases; *Provided*, One venire shall issue for the jurors so drawn from each county directed to the sheriff of such county. When a jury is required in the county court, in any county, so attached, the judge of said county court shall notify the said clerk of the district court, who shall, in the manner hereinbefore specified, draw the said jury from the box containing the names of jurors for the county where they are to serve, and certify the same to the clerk of the county court of said county.

Legislation. Sec. 3681. Act 1891 p. 249 § 3, amending G. S. § 1908. Act 1877 G. L. § 1467, which read:

Sec. 8. Whenever two or more counties are attached for judicial purposes, the board of commissioners in each of the counties so attached, shall select jurors according to the provisions of this act, and transmit the names of jurors so selected to the clerk of the district court. It shall be the duty of the judge of such district court, at least thirty days prior to every term of such court, to apportion the grand and petit jurors required by law to be summoned to attend at such term, among the several counties so attached, having reference to the population of the several counties, respectively. Thereupon, jurors shall be drawn by the clerk in the presence of the sheriff, in the manner hereinbefore specified, according to such direction and apportionment made by the judge, and writs of venire facias for summoning such jurors shall be issued as in other cases.

3682. Additional venire issued—Talesmen.

SEC. 15. If at any time the number of ballots in the box, shall be reduced to fifty or less, in counties of the first class, and to twenty-five or less in counties of the second, third or fourth class, the judge of the district court may, in his discretion, direct the clerk of said court to certify such fact to the clerk of the board of county commissioners, whereupon it shall be the duty of said clerk to immediately notify each of the county commissioners, and the said commissioners shall forthwith meet, and proceed to select such a number of jurors, as may be designated in the order of the

said district judge, and the clerk of said board shall immediately certify to the clerk of said district court, the names of such jurors so drawn; and the clerk of the district court shall place such names in the box ready to be used as occasion may require. Whenever it shall be necessary to bring in a new panel of jurors, the clerk shall direct that they be drawn from said box. Whenever it shall be necessary to summon talesmen, the court, in its discretion, shall direct that they be drawn from said box, or summoned from the bystanders; *Provided*, That either party may show cause, why talesmen should not be summoned from the bystanders, or may issue an open venire as heretofore practiced, and, in every case, the venire facias shall be returnable as the court shall direct, *Provided*, It shall be ground for challenge to any person so summoned from the bystanders on an open venire, if he shall have served as a juror either in a regular panel or as a talesman in any court of record within one year then last past.

Legislation. Sec. 3682. Act 1891 p. 250 § 4 amending G. S. § 1909. Act 1877 G. L. § 1468 which read:

Sec. 9. Whenever it shall be necessary to summons talesmen, the court may direct that they be summoned from the bystanders, or may issue an open venire, as heretofore practiced, or may cause them to be drawn from said box, and if it shall be necessary to bring in a new panel of jurors, the same course may be pursued, and in every such case the venire facias shall be returnable as the court shall direct.

CITATIONS.

Talesmen include persons summoned to supply a deficiency in the regular panel as well as persons summoned for a particular cause.—*Nesbit v. Peo.*, 19 C. 463, 36 P. 229.

This section was intended to supersede sec. 3690.—*Dill v. Peo.*, 19 C. 474, 36 P. 231.

The ground of challenge does not apply to a jury summoned upon the regular panel.—*Brooke v. Peo.*, 23 C. 376, 48 P. 502.

An open venire may be issued when the jurors originally summoned are insufficient.—*Housh v. Peo.*, 24 C. 263, 50 P. 1037. *Beals v. Cone*, 27 C. 490, 62 P. 954.

3683. Service as juror exempts for one year.

SEC. 16. At the end of each term of court the district clerk shall certify to the board of county commissioners the names of all

persons who have served on any regular panel of jurors at the preceding term, excluding those who have been called as talesmen to complete the panel in one or more causes, and the persons so certified shall not be again returned as jurors during a period of one year thereafter. The district clerk shall also destroy all ballots remaining in said box, and for the succeeding term of court the names of persons shall be certified by the county commissioners, and the jurors be drawn in the manner hereinbefore provided.

The names of competent persons may be successively returned by the county commissioners, until they have been drawn as jurors, and until they have performed service as such, when they shall be omitted for at least one year.

Legislation. Sec. 3683. Act 1877 G. L. § 1469. G. S. § 1910.

3684. Panel exhausted, venire issue for talesmen.

SEC. 17. Whenever it shall be necessary to empanel a jury for the trial of any civil or criminal case pending in the district court, the clerk of said court shall, by chance, draw from a box kept for that purpose the names of a sufficient number of petit jurors to constitute such jury, and if the panel of petit jurors in attendance upon the court shall be exhausted before such jury shall be filled, talesmen may be summoned for the purpose of making up such jury.

Legislation. Sec. 3684. Act 1867 p. 73 § 15. R. S. p. 390 § 15. G. L. § 1479. G. S. § 1912.

CITATIONS.

After the regular panel has been exhausted the court may order a tales, but the prisoner has the right to object to the depletion of the panel on insufficient grounds.—*Stratton v. Peo.*, 5 C. 280. *Mooney v. Peo.*, 7 C. 220, 3 P. 235.

The discharge of a panel and the summoning of another by open venire was not an error requiring reversal.—*Babcock v. Peo.*, 13 C. 517, 22 P. 818.

3685. Open venire issued when commissioners fail to return list—Penalty for neglect.

SEC. 18. If the board of county commissioners shall fail to return a list of competent persons, or if jurors shall not be drawn

and summoned as herein provided, and a jury is required in either the district or county court. the court shall, nevertheless, have power to cause a jury to be summoned by open venire as heretofore practiced. In case any board of commissioners shall wilfully neglect or refuse to furnish a list of jurors, as in this act provided, each member of the board of county commissioners so failing, refusing or neglecting, shall be individually subject to a fine of not more than five hundred dollars, to be recovered in an action in the name of the people for the use of said county. Such action to be brought and prosecuted by the district attorney of the district in which said county is situated, and the money, when collected, shall be paid in the county treasury for the use and benefit of the general county expenses, and a neglect or failure to select the jurors, as in this act provided, shall be prima facie evidence that such neglect or failure was wilful unless excused by sickness.

Legislation. Sec. 3685. Act 1891 p. 251 § 5, amending G. S. § 1911. G. L. § 1470. Framed on R. S. p. 389 § 10, which was Act of 1867 p. 71 § 10.

CITATIONS.

The selection of jurors by the commissioners does not exclude the common law mode of selection.—*Mackey v. Peo.*, 2 C. 16. *Giano v. Peo.*, 30 C. 26, 69 P. 505.

This section cited as to the selection of a jury in condemnation proceedings.—*Colo. F. & I. Co. v. Four Mile Ry. Co.*, 29 C. 99, 66 P. 904.

The county court may summon a jury to try criminal information, by open venire.—*Walt v. Peo.*, 46 C. 139, 104 P. 90.

This section cited in connection with sec. 3705 as to jury fee.—*Pitkin County v. Brown*, 2 A. 476, 31 P. 526.

No showing being made that the contingency specified did not exist it must be presumed that the action of the court in summoning a jury by open venire was regular.—*Garfield County v. Adams*, 16 A. 515, 66 P. 684.

3686. How jurors summoned.

SEC. 19. Jurors selected according to the provisions of this act shall be summoned to attend upon the court by writ of venire facias, directed to the sheriff of the proper county in the manner heretofore practiced, and such writs may be made returnable upon any day of the term, as the court or judge thereof shall direct.

1913. **Legislation.** Sec. 3686. Act 1874 p. 173 § 11. G. L. § 1471. G. S. § 1472. G. S. § 1914. Before 1877 the age of the person read "Twelve" instead of "sixteen" years.

The Act of 1874, from which the text was taken, was a full Act regulating selection of jurors to serve in the district court.

CITATIONS.

The failure of a deputy sheriff to file his appointment did not disqualify him from serving a special venire.—*Smith v. Peo.*, 39 C. 206, 88 P. 1072.

It was error to deny defendant's motion to quash a special venire summoned by a bailiff.—*Burnside v. Peo.*, 39 C. 487, 90 P. 97.

3687. Service of venire.

SEC. 20. A venire may be served by reading the same to the jurors personally, or by leaving a copy thereof at his usual place of abode with some person above the age of sixteen years; and the same shall be served at least five days before the day on which the jurors are required to appear.

Legislation. Sec. 3687. Act 1867 p. 71 § 9. R. S. p. 389 § 9. G. L. § 1472. G. S. § 1914. Before 1877 the age of the person read "Twelve" instead of "sixteen" years.

3688. Juror failing to appear—Penalty.

SEC. 21. If any person who shall be lawfully summoned to appear before any district or county court as a grand or petit juror shall fail, neglect or refuse to appear as required by such summons, without reasonable excuse, he shall be deemed guilty of contempt and shall be fined as the court may direct.

Legislation. Sec. 3688. Act 1867 p. 73 § 14. R. S. p. 390 § 14. G. L. § 1478. G. S. § 1915. Act 1891 p. 252 § 8. This last Act inserted the words "or County" between "District" and "Court" and made no further change.

III. CHALLENGES AND TRIALS THEREOF.

Section.

3689. Panel not to be quashed for irregularity.

3690. Service as juror within one year ground for excuse and challenge.

3691. Opinion formed no disqualification.

3692. Number of challenges in criminal cases.

3693. Court shall try issues on challenge.

3694. Issues of fact upon challenge tried by court.

3689. Panel not to be quashed for irregularity.

SEC. 22. No indictment, nor any array or panel of any grand or petit jury, shall be quashed, nor shall any verdict in any case, civil or criminal, be stayed or averted by reason that the county commissioners, in selecting such grand jury, or petit jury, to attend at the term of court to which such indictment is returned, or which have returned such indictment or verdict, have returned such jury or any of them in any informal or irregular manner, which in the opinion of the court is unimportant and insufficient to vitiate the return of such jury.

[Professional gambler ground of challenge to poll, section 3670.]

Legislation. Sec. 3689. Act 1874 p. 175 § 17. G. L. § 1473. G. S. § 1894.

3690. Service as juror within one year ground for excuse and challenge.

SEC. 23. That the fact that any person summoned in any way to serve as a juror in any district or county court shall have served as a juror in either of said courts, at any prior term, within one year next preceding, shall be a sufficient excuse for such person from service, and may also be ground for challenge for cause to such individual summoned.

Legislation. Sec. 3690. Act 1905 p. 280 § 1, superseding Act 1889 p. 220 § 1, and Act 1881 p. 165 § 1. G. S. § 1896. The 1881 Act read:

Sec 1. The fact that any juror in any district or county court shall have served as a regular juror of the regular panel in either of said courts at the term next preceding, shall be a sufficient excuse for such juror from service, and may also be ground for challenge for cause to such individual juror.

The 1889 Act read:

Sec. 6. The fact that any juror in any District or County court shall have served as juror of the regular panel, or as talesman, in either of said courts at any time within the year next preceding, shall be a sufficient excuse for such juror from service in the same court and may also be a ground for challenge for cause to such individual juror.

CITATIONS.

The act of 1891 (sec. 3682) was intended to supersede this section; jurors are not liable to challenge unless summoned from the by-standers.—*Dill v. Peo.*, 19 C. 474, 36 P. 231.

CITATIONS CONTINUED.

Service within one year in another court is not ground of challenge for cause.—*Courvoisier v. Raymond*, 23 C. 116, 47 P. 286.

3691. Opinion formed, no disqualification.

SEC. 24. No person summoned as a juror in a criminal case shall be disqualified to serve as such by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused; *Provided*, The court shall be satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict, according to the law and the evidence submitted to the jury in the trial of such cause.

[See Chapter 13, Code, Formation of Jury, for additional grounds.]

Legislation. Sec. 3691. Act 1872 p. 94 § 1. G. L. § 872. G. S. § 1893.

CITATIONS.

A pre-conceived opinion in the mind of a juror is not a ground of challenge for cause.—*Solander v. Peo.*, 2 C. 59. *Jones v. Peo.*, 2 C. 354, 6 C. 456. *Union G. M. Co. v. Bank*, 2 C. 577.

Proper test stated where a juror has heard something about the case and has partially formed an opinion.—*Jones v. Peo.*, 6 C. 456.

The finding by the court of the fact of the juror's indifference is not reviewable.—*Minich v. Peo.*, 8 C. 448, 9 P. 10. *Babcock v. Peo.*, 13 C. 518, 22 P. 818. *Thompson v. Peo.*, 26 C. 505, 59 P. 54. *Smith v. Peo.*, 39 C. 207, 88 P. 1072. *Imboden v. Peo.*, 40 C. 172, 90 P. 618. *Ausmus v. Peo.*, 47 C. 197, 107 P. 204.

The duty is devolved upon the trial judge to determine whether or not a person is qualified to serve as a juror.—*Power v. People.*, 17 C. 181, 28 P. 1122.

In civil as well as in criminal actions challenges for cause are triable by the court.—*Salazar v. Taylor*, 18 C. 540, 33 P. 369.

A juror who served at a former uncompleted trial was called at the second trial and challenged. The court suggests that justice would be subserved by allowing the challenge.—*Simpson v. Peo.*, 47 C. 614, 108 P. 169.

3692. Number of challenges in criminal cases.

SEC. 25. That the people and the accused shall be entitled, each, to fifteen (15) peremptory challenges in capital causes, and

in all other cases where the punishment may be imprisonment in the penitentiary, to ten (10) peremptory challenges each.

Legislation. Sec. 3692. Act 1872 p. 94 § 2. G. L. § 873. G. S. § 1897.

The act of 1861 p. 320, § 141 allowed the accused in capital cases ten peremptory challenges; when the imprisonment might exceed 18 months four challenges; in all other cases two challenges. The district attorney was allowed half as many as the prisoner.

Act 1868 R. S. p. 242 § 212 allowed six challenges where four had been allowed before, and three where two had been allowed, and gave the prosecution the same number of challenges as the accused.

A separate Act of 1868 p. 473 § 2 read verbatim the same as the act on p. 242 except that the word "punished" in the first act read "punishable" in the second, which makes no difference whatever in the meaning. But both sections contain the clause:

"And in all other criminal cases the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on the part of the people shall be admitted to a peremptory challenge of the same number of jurors that the accused is entitled to and no more."

We cannot find that this clause was ever repealed and it seems to be the only act covering the number of peremptory challenges in misdemeanor cases. It was omitted from the G. L. but is found in the errata of the G. S. p. 1429.

The number of peremptory challenges allowed in a civil case is four to each side. Code § 198.

CITATIONS.

One charged with crime under U. S. laws had advantage of a territory law as to number of challenges.—*Beery v. United States*, 2 C. 203, 207.

Challenges should be exercised alternately one by one and after each challenge the panel refilled.—*Nicholson v. Peo.*, 31 C. 55, 71 P. 377. *Weaver v. Peo.*, 47 C. 617, 108 P. 831.

Where two or more defendants are jointly tried each one is entitled to the full number of challenges.—*Carpenter v. Peo.*, 31 C. 286, 72 P. 1073.

3693. Court shall try issues on challenge.

SEC. 26. That if upon the trial of any issue of fact in any civil action, or any issue out of chancery, or of any indictment or information, either party shall desire to introduce evidence of the incompetency, disqualification or prejudice of any jurors selected or called for the trial of such issue, and who by the examination of such juror shall appear to be qualified, competent and unprejudiced, such evidence shall be heard, and the competency of such juror shall be determined by the court without the intervention of triers* and exceptions may be taken and shall be allowed

to the questions and answers and decision of the judge as to the competency of such juror, and error may be assigned and prosecuted upon the rulings and decision of the court in relation thereto.

Legislation. Sec. 3693. R. S. p. 391 § 18. G. L. § 1480. G. S. § 1895. The G. L. revision added to the original section the clause which follows the star

3694. Issues of fact upon challenge tried by court.

SEC. 27. All issues of facts arising upon any challenge to the array of any grand or petit jury, or to the individual jurors, shall be tried by the court or by triers appointed as the court shall direct.

Legislation. Sec. 3694. Act 1877 G. L. § 1474. G. S. § 1920.

IV. GRAND JURORS.

Section.

3695. Grand jurors drawn on order of court—Judge may dispense with petit jury—Additional panels.

3696. Grand jurors, how drawn.

3697. Number of grand jury—Discharge—Talesmen.

3698. Foreman appointed.

3699. Oath of foreman—Oath of jurors.

3700. Investigation of grand juror—Discharge of juror.

3701. Grand juror giving information must be sworn.

3695. Grand jurors drawn on order of court—Judge may dispense with petit jury—Additional panels.

SEC. 28. Grand juries shall not hereafter be drawn, summoned, or required to attend the sitting of any court in any county in this state, unless specially ordered by the court having jurisdiction to make such order, if the business to be transacted at any term of a district court, shall not require a petit jury to attend at such term the judge of such court shall by written order to be filed with the clerk of the court, dispense with such petit jury at such term, and in that event no petit jury shall be drawn or summoned. If in the opinion of the judge of any district court the business to be transacted at any term of such court shall require a petit jury to attend at such term for more than two weeks, he may by

written order to be filed with the clerk direct a second panel of petit jurors to be summoned to attend after the first panel shall have been discharged. In like manner a third and fourth panel of petit jurors may be drawn, and summoned, and in every case the judge of a district court may direct upon what day of a term of court a venire for jurors shall be returnable, and such venire shall be issued, and made returnable according to such direction. But if no such order shall be made, a venire for jurors shall be returnable on the first day of the term.

* **Legislation.** Sec. 3695. Act 1891 p. 253 amending G. S. § 1907. G. L. § 1466, which read:

Sec. 7. If the business to be transacted at any term of a district court shall not require a grand or petit jury to attend at such term, the judge of such court may, by written order, to be filed with the clerk of the court, dispense with a grand or petit jury at such term, and in that event, no grand or petit jury shall be drawn or summoned. If in the opinion of the judge of any district court, the business to be transacted at any term of such court shall require a petit jury to attend at such term for more than two weeks, he may, by written order, to be filed with the clerk, direct such clerk to draw a second panel of petit jurors, to be summoned to attend after the first panel shall have been discharged. In like manner a third and fourth panel of petit jurors may be drawn, and summoned, and in every case the judge of a district court may direct upon what day of a term of court a venire for jurors shall be returnable, and such venire shall be issued and made returnable according to such direction. But if no such order shall be made, a venire for jurors shall be returnable on the first day of the term.

CITATIONS.

Where it was apparent on the face of the record that the grand jury could not have been a legal body advantage could be taken by motion in arrest of judgment.—*Wilson v. Peo.*, 3 C. 327.

Due process of law in a prosecution for a felony does not necessarily include an indictment by grand jury.—*In re Dolph.* 17 C. 36, 28 P. 471.

This section cited in holding that the district attorney may discontinue any criminal cause without the consent of the court.—*Peo. v. Dist. Court.* 23 C. 470, 48 P. 502.

Where no grand jury has been summoned the court was authorized to direct that such jurors be summoned by open venire as at common law.—*Imboden v. Peo.*, 40 C. 151, 90 P. 612.

The court has inherent authority to call a grand jury and is under no necessity to examine witnesses as to whether it shall exercise such power.—*Williams v. Peo.*, 46 C. 185, 103 P. 298.

3696. Grand jurors, how drawn.

SEC. 29. In drawing the list of jurors for the first panel of any term of court, the first twelve names drawn from the box shall constitute the list of jurors for the grand jury in case a grand jury is required.

Legislation. Sec. 3696. Act 1891 p. 251 § 6.

CITATIONS.

This section cited in prohibition proceedings in considering the objection that the first twelve names drawn from the jury box were not separated from the others.—*Peo. v. Dist. Court*, 29 C. 84, 66 P. 1068.

3697. Number of grand jury—Discharge—Talesmen.

SEC. 30. A grand jury shall consist of twelve persons, nine of whom shall assent to the finding of every true bill. If any of those who may be drawn as grand jurors shall not be summoned, or being summoned, if any fail to appear, talesmen may be summoned to make up the number; and whenever after a grand jury has been empaneled, it shall be necessary because of sickness or other cause to discharge a member thereof, the court shall cause another competent person to be summoned to take the place of him who was discharged, and the person so summoned being sworn, shall, with his fellows, have full power and authority in like manner as if he had been first empaneled of the said jury, and no objection to the constitution of such jury for that cause shall be allowed.

Legislation. Sec. 3697. Act 1877 G. L. § 1477. G. S. § 1918 amending R. S. p. 390 § 13.

The amendment was to conform to the Constitution, Art. II. § 23. Under the territory the grand jury was not to be less than 16 nor more than 23 persons and 12 jurors were required to return a "True Bill."

CITATIONS.

Under R. S. 1868 which provided that a grand jury should consist of not less than sixteen nor more than twenty-three persons, twenty-one was a sufficient number.—*Mackey v. Peo.*, 2 C. 17.

Any irregularity in selecting the grand jury should be raised before plea, by a challenge to the array.—*Wilson v. Peo.*, 3 C. 327.

3698. Foreman appointed.

SEC. 31. Before the grand jury at any term of court shall be sworn, or affirmed, the court shall appoint a foreman of such jury, and such foreman shall have power to administer an oath, or affirmation, to any and all witnesses who may be required to testify before such jury. He shall also endorse upon every bill that may be presented to the grand jury the finding of such jury as that the same is "A true bill," or "Not a true bill," as the case may be, and sign his name thereto, before the same is returned into court.

Legislation. Sec. 3698. Act 1867 p. 72 § 11. R. S. p. 390 § 11. G. L. § 1475. G. S. § 1916.

CITATIONS.

Until a bill is endorsed "a true bill" and signed and presented it is not an indictment.—*Arapahoe County v. Graham*. 4 C. 202.

It is error to put a defendant on trial on an indictment which was not returned in open court and this can only be shown by the record.—*Thornell v. Peo.*, 11 C. 307, 17 P. 904.

3699. Oath of foreman—Oath of jurors.

SEC. 32. Before the grand jury shall enter upon their duties, an oath or affirmation shall be administered to the foreman, as follows, to wit:

You, as foreman of this inquest, do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you will present no person through malice, hatred or ill-will, and that you will leave no one unrepresented through fear, favor or affection, or for any fee or reward or the hope or promise thereof; that you will keep secret your own counsel and that of your fellows touching the present service, and that in all your presentments you will present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God.

And an oath or affirmation shall be administered to the other grand jurors as follows, to wit:

You and each of you do solemnly swear (or affirm) that you will well and truly keep and observe the oath that "A. B.," your foreman, has just taken before you, so help you God.

Legislation. Sec. 3699. Act 1867 p. 72 § 12. R. S. p. 390 § 12. G. L. § 1476. G. S. § 1917. The 1867 Act was an Act codifying the subject of jurors and it prints the text which was a substantial duplicate of the Act of 1861 p. 335 § 4, except that the 1861 section omitted the clause "That you will keep secret your own council and that of your fellows touching the present service."

3700. Investigation of grand juror—Discharge of juror.

SEC. 33. In any case where a grand juror has been sworn and it becomes necessary to investigate his conduct with reference to any charge, and in case it becomes necessary to investigate any person's conduct who is a relative of any grand juror, or a partner of his in business, the district attorney shall briefly set forth such fact in writing to the district judge, who shall excuse such juror from further attendance, and shall immediately proceed to fill his place by drawing another juror's name from the box, who shall be interrogated and charged as though he had been originally empaneled. And in case any grand juror shall become sick, or from any cause incapacitated from discharging his duty, the court shall excuse such juror and proceed to fill his place by another person whose name shall be drawn from the box, and the cause of the discharge of any such grand juror shall be briefly entered on the record of the court; and the discharge of any such grand juror shall in no way or manner affect any indictment found by the jury as it was composed either before or after such change.

Legislation. Sec. 3700. Act 1891 p. 251 § 7.

3701. Grand juror giving information must be sworn.

SEC. 34. Whenever any member of a grand jury shall give information touching any matter pending before such jury, he shall take an oath or affirmation in the same manner as other witnesses.

[For number of grand jurors see section 3697.]

Legislation. Sec. 3701. Part of § 13 Act 1867 p. 69. Part of § 13 R. S. p. 390. G. S. § 1919. Not in G. L.

V. FEES.

Section.

3702. Jury fee \$5 to be taxed.

3703. Clerk furnish each juror certificate—Warrant.

3704. Expense of meals, etc., for jurors in civil cases, how paid.

3705. Fees advanced by party demanding jury in county court—Costs.

3702. Jury fee \$5 to be taxed.

SEC. 35. A jury fee of five dollars shall be taxed as part of the costs of the suit in each cause tried by jury. The clerk shall pay such fee, when collected, into the county treasury.

Legislation. Sec. 3702. Act 1861 p. 337 § 15 amended by Act 1864 p. 101 § 1 and by Act of 1867 p. 73 § 16. R. S. p. 391 § 16. G. L. § 1458. G. S. § 1921.

CITATIONS.

Jury fees and witness fees were not within the purview of the salary act of 1891, and were not required to be paid into the fee fund.—*Adams v. Peo.*, 25 C. 533, 55 P. 806.

3703. Clerk furnish each juror certificate—Warrant.

SEC. 36. The clerk shall, without fee, furnish to each juror who shall attend at any term of court, a certificate showing the number of days that such juror shall have attended at such term; and upon presentation thereof to the county commissioners, they shall issue to such juror their warrant upon the county treasury for the amount of the per diem and mileage of such juror.

Legislation. Sec. 3703. Act 1861 p. 337 § 14. Act 1867 p. 75 § 17. R. S. p. 391 § 17. G. L. § 1459. G. S. § 1922.

CITATIONS.

The clerk is not entitled to compensation for furnishing the certificate nor for taking the affidavits of the jurors as to attendance.—*San Miguel County v. Long*, 8 C. 439, 8 P. 924

The fees of regular jurors are chargeable to the county; the fees of a jury for an individual cause must be advanced by the party demanding it.—*Pitkin County v. Bank*, 6 A. 426, 40 P. 895.

3704. Expense of meals, etc., for jurors in civil cases, how paid.

SEC. 37. In all civil cases, if any expenses shall be incurred in furnishing meals or provisions to jurors, impaneled to try such causes, such expenses shall be taxed as costs in the suit against the unsuccessful party; and when collected, the same shall be paid into the county treasury; but in the first instance the same shall be paid by the county.

Legislation. Sec. 3704. Act 1867 p. 74 § 19. R. S. p. 391 § 19. G. S. § 1923. Not in G. L.

3705. Fees advanced by party demanding jury in county court—Costs.

SEC. 38. In any action pending before the county court of any county of the second, third or fourth classes, as established by this act, either party may have a jury summoned, to try the same by advancing fees for the payment of such jurors, and when judgment shall be rendered in favor of the party demanding the trial by jury, such party shall recover the fees paid by him for such jurors, of the adverse party, and have the amount thereof taxed as part of the costs in the case. In any such action pending before the county court of counties of the first class, as established by this act, either party shall be entitled to a jury, without advancing the fees therefor.

[For fees and mileage of jurors, see sections 2541 and 2543.]

Legislation. Sec. 3705. Act 1891 p. 252 § 9.

CITATIONS.

This section providing that in certain counties either party may have a jury without advancing the fees is repugnant to sec 26 art. VI of the constitution.—*Pitkin County v. Bank*, 24 C. 126, 48 P. 1043. (Affirming 6 A. 426, 40 P. 895.)

The failure of a court to compel plaintiff to prepay the fee was not such an error as warranted disturbing the judgment.—*Pitkin County v. Brown*, 2 A. 476, 31 P. 526.

In a county of the first class either party shall be entitled to a jury without advancing fees.—*Woods v. Tanquary*, 3 A. 517, 34 P. 738.

VI. JURY COMMISSIONER

Section.

- 3705-A. Appointment—Term of office—Salary.
 - 3705-B. Bond—Salary—Expenses—Clerk—Deputy.
 - 3705-C. Assistance of county officers.
 - 3705-D. Preparation of petit jury list—Notice—Hearing.
 - 3705-E. Exemptions—Penalties.
 - 3705-F. Public record.
 - 3705-G. Ballots—Drawing.
 - 3705-H. Open venire.
 - 3705-J. Exemption—Term of service—Notice.
 - 3705-K. Refusal or neglect to obey.
 - 3705-L. Unlawful act.
 - 3705-M. Violation of act by jury commissioner, county clerk or any member of the appointing board, or clerk of any court.
 - 3705-N. Removal of commissioner.
 - 3705-O. Officers may act by deputies.
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3705-A. Appointment—Term of office—Salary.

SEC. 38a. In every county in this state now containing, or which may hereafter contain, more than one hundred thousand inhabitants, as shown by the last census, either state or federal, of the inhabitants of this state, the judges of the several courts of record of such county shall constitute a board for the purposes herein specified, and they, or a majority of them, shall choose and appoint a competent and discreet elector to be a jury commissioner, and the appointment of such commissioner shall be in writing, signed by a majority of such board and filed in the office of the county clerk. The term of office of such commissioner shall expire on the 31st day of December, in the year next succeeding the year in which he shall have been appointed. Such commissioner shall, in counties now containing the required number of inhabitants, be chosen within fifteen days after this act shall take effect, and in counties hereafter containing the required number of inhabitants such commissioner shall be chosen on the first Monday of July after it shall have been determined by the last preceding census that the inhabitants of such county are of the number required.

Legislation. Sec. 3705-A. § 1 of Act of 1911 S. B. No. 352, entitled:

AN ACT

Relating to Petit Jurors, Providing for the Appointment of a Jury Commissioner in Counties With a Population of More Than 100,000 Inhabitants, and Providing Certain Penalties. (Approved May 28th, 1911.)

It has been suggested that this Act is in conflict with the Clause of § 25 of Art. 5 of the Constitution, which says that the general assembly cannot make special or local laws—regulating the practice in courts of justice.

3705-B. Bond—Salary—Expenses—Clerk—Deputy.

SEC. 38b. Before entering upon the discharge of his duties the commissioner shall execute a bond to the county in a sum to be fixed by the appointing board, not less than two thousand dollars nor more than five thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the county clerk and filed in his office, and the jury commissioner shall qualify and enter upon the discharge of his duties within five days from the time he is appointed. Such jury commissioners shall be officers of the several courts of record of their respective counties, and shall each receive an annual salary of three thousand dollars, payable in monthly installments, out of the funds of the county, and the boards of county commissioners of such counties shall each annually appropriate an amount sufficient to pay and shall pay such salary and the salary of such jury commissioner's clerk hereinafter provided for, and all necessary expenses of such office, and shall furnish a suitable and adequate room and suitable and adequate accommodations and supplies for said jury commissioner; and shall audit all expenses and disbursements of said commissioner monthly upon the presentation by the jury commissioner of properly itemized and verified statements thereof, which shall be paid in the same manner as other county expenses. The jury commissioner in each such county may appoint one clerk, whose compensation shall be fixed by the board appointing the commissioner and shall not exceed twelve hundred dollars per annum. In case of absence or temporary disability of the jury commissioner, the board appointing him may appoint a deputy jury commissioner who shall perform all of the duties and possess all of the powers of said jury commissioner

during such absence or temporary disability, and said deputy shall during the time he is acting draw and be paid the salary which would otherwise have been paid to the jury commissioner. The jury commissioner shall be empowered to administer an oath or affirmation in relation to any matter embraced within the provisions of this act. The jury commissioner shall be at his office during all the time any court of record is in session in the county, and he shall keep a record of all the proceedings of his office.

Legislation. Sec. 3705-B. § 2 of Act of 1911, cited under § 3705-A.

3705-C. Assistance of county officers.

SEC. 38c. The county commissioners, county treasurer, county clerk and county assessor shall render to such jury commissioner all the assistance in their power to enable him to procure the names of all persons in the county qualified to serve as petit jurors, and for said purpose shall give said jury commissioner access to all books, records and papers in their respective offices, and any of the foregoing officers who shall refuse or fail to furnish to the jury commissioner such assistance within a reasonable time after having been requested so to do by him, as herein provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each offense.

Legislation. Sec. 3705-C. § 3 of Act of 1911, cited under § 3705-A.

3705-D. Preparation of petit jury list—Notice—Hearing.

SEC. 38d. Immediately upon his appointment, the jury commissioner shall prepare a list of persons in his county, who are qualified by law to serve as petit jurors, and not exempt from jury service. Such jury list shall include not less than two such persons for every one hundred inhabitants of said county and not more than two such persons for every seventy-five of said inhabitants, according to the latest census, state or federal. The names on said jury list shall be entered alphabetically in a suitable book or books, together with the occupation and place of

residence of each person named on said list, and his place of business, if any.

Legislation. Sec. 3705-D. § 4 of Act of 1911, cited under § 3705-A.

3705-E. Exemptions—Penalties.

SEC. 38e. The jury commissioner shall have power to mail to all persons, whom he shall from time to time ascertain or believe to be qualified for jury duty in such county, an examination form, or a list of pertinent and necessary questions to be answered in writing, respecting the name, age, occupation, residence and such other facts as may show whether a person is qualified to serve as a juror; and to summon before him all such persons at a time not less than three days from the day of service of said summons, at his office in such county, or at such place in the town or city where the person so summoned resides as the jury commissioner shall deem expedient; and to examine any such person under oath as to his own liability and qualification, or the liability and qualification of any other person, to serve as a juror. A person to whom such form or list shall be mailed or who shall be so notified shall make and return truthful answers to the questions mailed to him, or shall attend and testify, if summoned. If any such person shall fail to return truthful answers to the questions mailed to him, or to attend as specified in the summons, for any cause except physical inability, or other cause satisfactory to the commissioner, or, if he shall refuse to be sworn or to answer any question lawfully put to him by the jury commissioner, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of fifty dollars for each such failure or refusal. One or more summonses may be served upon the same person, when he shall fail to attend as required by a former summons, and he shall be liable to the same penalty for each failure so to attend. The commissioner may, in his discretion, dispense with the personal attendance of a person so summoned, when another person having knowledge of the facts is produced and testifies in his stead. And a person shall not be required so to attend more than twice during the same year.

Legislation. Sec. 3705-E. § 5 of Act of 1911, cited under § 3705-A.

3705-F. Public record.

SEC. 38f. The book or books containing the jury list shall be kept in the office of the jury commissioner, and shall be open to public inspection. A new list of jurors shall be made by the jury commissioner each year, in the manner herein provided, or oftener if the appointing board shall, in writing, so order.

Legislation. Sec. 3705-F. § 6 of Act of 1911, cited under § 3705-A.

3705-G. Ballots—Drawing.

SEC. 38g. When such jury list has been made up the jury commissioner shall cause the name and the residence of each person thereon to be written or printed upon a separate slip of paper. These slips shall be uniform and shall be so folded as not to permit the writing or printing thereon to be seen. The jury commissioner shall, in the presence of the county clerk and one or more of the members of the appointing board, deposit these slips in a box prepared therefor, and the jury commissioner, county clerk and one or more of the members of the appointing board, shall lock and seal, each using his own separate seal, and deliver said box to the county clerk to be held by him in accordance with the provisions of this act, and from it, or the names remaining therein, all petit jurors for service in courts of record in such county shall thereafter be drawn; *Provided, however,* That in cases of need, persons whose names are not in said box, as well as persons whose names are contained therein, may be summoned upon an open venire according to law. The several courts of record, or any judge thereof, shall from time to time, signify to the clerk of such court the number of jurors required to be summoned, and said clerk shall then go to the office of the county clerk, and in the presence of the jury commissioner, the county clerk and one or more of the members of the appointing board, shall open the box and draw the required number of names and certify the same to the sheriff, who shall summon them for jury duty according to law. Said box shall be cylindrical in form, of adequate size, suspended in a suitable frame, and so devised as to be turned with a crank, and thoroughly to mix the slips. Inside the box there shall be affixed to spokes surrounding the axle stationary rods ex-

tending out nearly to the rim. Said box shall be provided with an opening only large enough to admit a man's hand. The clerk, before drawing therefrom, shall turn the crank a sufficient number of times thoroughly to mix the slips. He shall then, without seeing the name on any slip, draw out of the box one slip, and continue to draw in like manner, one slip at a time, until the required number has been drawn. When the drawing is finished, the box shall be locked and sealed by the jury commissioner, the county clerk and one or more of the members of the appointing board, each using his own separate seal, and shall not again be opened nor the seals be broken until another drawing, except in pursuance of law. All drawings of jurors under the provisions of this act shall take place not more than ten days before the time the jurors are summoned to attend for service. At the close of each term of court the clerks of the several courts shall immediately certify to the jury commissioner the names of all jurors impanelled at said term and the names of all persons excused from jury service during said term, with a statement of the causes for which they were excused.

Legislation. Sec. 3705-G. § 7 of Act of 1911, cited under § 3705-A.

3705-H. Open venire.

Sec. 38h. Nothing in this act contained shall be held to deprive any court of record of the power to cause a jury to be summoned by open venire.

Legislation. Sec. 3705-H. § 8 of Act of 1911, cited under § 3705-A.
As to open venire see Secs. 3682, 3685.

3705-J. Exemption—Term of service—Notice.

Sec. 38j. The term of jury service shall be two calendar weeks, and a person who has actually been in attendance as a juror in a court of record in any county embraced within this act for two complete calendar weeks shall be discharged by the court; *Provided, however,* That no juror shall be discharged until the close of the trial in which he may be serving, and that if the selection of a jury in any cause has been begun the court shall have power to retain the panel until such jury has been selected and

sworn. A person discharged as prescribed in this section shall be for the period of one year thereafter disqualified for jury service in any court of record.

Legislation. Sec. 3705-J. § 9 of Act of 1911, cited under § 3705-A.

This section would not seem to invalidate other exemptions under Secs. 3670-3676.

3705-K. Refusal or neglect to obey.

SEC. 38k. Any person who shall refuse or neglect to obey any lawful mandate, order or direction of the jury commissioner, or who shall hinder, delay or obstruct the service of any process issued by said commissioner, or who shall refuse or neglect to appear, or who shall refuse to answer any question touching his qualification, or the qualification of any other person, as a juror, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than ten dollars and not more than one thousand dollars, or by imprisonment in the county jail for a period of not more than one year, or by both.

Legislation. Sec. 3705-K. § 10 of Act of 1911, cited under § 3705-A.

3705-L. Unlawful act.

SEC. 38l. Any person who shall do any act, for the purpose of procuring his own name or the name of any other person to be placed upon the jury list, or to be omitted therefrom, except as provided in this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars and not more than one thousand dollars, or by imprisonment in the county jail for a period of not more than one year, or by both.

Legislation. Sec. 3705-L. § 11 of Act of 1911, cited under § 3705-A.

3705-M. Violation of act by jury commissioner, county clerk or any member of the appointing board, or clerk of any court.

SEC. 38m. If any jury commissioner, or clerk to any jury commissioner, or county clerk or deputy county clerk or clerk of any court or deputy clerk of any court, shall place on or take from

said jury list, or put into or take from said box prepared or used for said slips of paper with the names of persons from said jury list thereon, any name upon the request or solicitation of any person or otherwise than according to law, or shall, in making any drawing of names from said box in compliance with law or the order of any court, do any act for the purpose of drawing therefrom any particular name or names or the name or names of any person or persons of any particular class, or shall violate this act in any manner whatsoever, he shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for not less than one year nor more than three years.

Legislation. Sec. 3705-M. § 12 of Act of 1911, cited under § 3705-A.

3705-N. Removal of commissioner.

SEC. 38n. Any jury commissioner may be removed by the board by whom his appointment was made, or a majority thereof, summarily and without notice, for any reason deemed sufficient by said board.

Legislation. Sec. 3705-N. § 13 of Act of 1911, cited under § 3705-A.

3705-O. Officers may act by deputies.

SEC. 38o. Any duty required by this act of the county clerk or clerk of any court may in case of the absence or temporary disability of the county clerk, or clerk of the court, be performed by a duly authorized and acting deputy county clerk or deputy clerk of the court with the same effect as it may be performed by the county clerk or the clerk of the court.

Legislation. Sec. 3705-O. § 14 of Act of 1911, cited under § 3705-A.
Sec. 15 was the Emergency Clause

CHAPTER LXXVIII.

JUSTICES AND CONSTABLES.

- I. JUSTICE PRECINCTS.—3706-3710.
 - II. CIVIL ACTIONS.—3711-3860.
 - III. CRIMINAL PROCEEDINGS.—3861-3883.
 - IV. BONDS OF JUSTICES AND CONSTABLES AND ACTIONS THEREON.—3884-3890.
 - V. GENERAL PROVISIONS.—3891-3901.
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I. JUSTICE PRECINCTS.

Section.

- 3706. Creating and changing precincts—Election of justice—Term.
 - 3707. County commissioners may appoint additional justices and constables.
 - 3708. County commissioners shall unite contiguous precincts.
 - 3709. Towns and cities not divided.
 - 3710. Commissioners may reduce number of justices and constables—Books and records.
-

3706. Creating and changing precincts—Election of justice—Term.

SECTION 1. The board of county commissioners of the several counties of this state shall at their July meeting, next after the passage of this act, divide their respective counties into as many justices' precincts as the necessities of the county may require, and upon the petition of the voters of any such precinct may change the same, or create other such precincts, and shall cause to be entered in the journal of their proceedings a record of such precincts,

[For election of justice and constable see section 2140, and Constitution, article 14, section 11.]

giving accurate boundaries thereof. The said board of commissioners shall have power to reduce the number of justices' precincts in any county by uniting two or more precincts or parts thereof, and forming thereby a new precinct, as in their judgment the public good shall require; *Provided*, That any action of such board of county commissioners under the provisions of this act shall not have the effect to abolish the office of justice or constable in such precinct or to in any manner interfere with the jurisdiction of any justice or with the powers and duties of any constable during their respective terms of office. There shall be elected at the first election after the passage of this act, at which county officers are chosen, and annually thereafter in each justice precinct, one justice of the peace and one constable, who shall each hold his office for the term of two years; *Provided, however*, That the justices' precincts as heretofore established and now existing under the name of justices' townships shall be and remain as now established until the county commissioners shall change the same, and the justices and constables now holding office therein shall continue in office until their respective terms shall expire.

[Fees of justices, section 2539.]

[Fees of constables, section 2540.]

Legislation. Sec. 3706. Act 1883 p. 121 § 2. G. S. § 666 amending Act of 1877 G. L. § 551.

CITATIONS.

The word "precincts" must be substituted herein for the word "townships."—*Reynolds v. Larkins*, 10 C. 130, 14 P. 116.

This section cited in construing the word "town" in sec. 2319 to mean incorporated towns and not townships.—*Garfield County Court v. Schwarz*, 13 C. 294 22 P. 783.

This section referred to in holding the act of 1891 (sec. 3707) constitutional.—*Pueblo County v. Smith*, 22 C. 538, 45 P. 359.

The only limitation upon the power of the legislature is that relating to the increase of the number of justices in the same precinct.—*Morris v. Peo.*, 8 A. 379, 46 P. 692.

A justice of the peace is a constitutional officer whose term of office can neither be abridged nor lengthened.—*Chapman v. Peo.*, 9 A. 269, 48 P. 154.

3707. County commissioners may appoint additional justices and constables.

SEC. 2. The board of county commissioners of any county in this state, having within their respective counties a justice precinct of more than twenty thousand inhabitants, may, at any regular meeting of the board, appoint one or more justices of the peace, and one or more constables, as the needs of the precinct may require, and such appointees shall hold office until their successors are elected and qualified; *Provided*, That, in addition to the two justices of the peace, and the two constables now provided by law for each justice precinct, such board of county commissioners shall not appoint more than one such justice and constable of each twenty thousand inhabitants in such precinct.

Legislation. Sec. 3707. Act 1891 p. 116 § 1 entitled:

AN ACT

To provide for increasing the number of justices of the peace, and constables in justice precincts of more than twenty thousand inhabitants.

This act is qualified by the later act of 1897, § 3710.

CITATIONS.

The act of 1891 (secs. 3707-3709) was a valid exercise of legislative power. Whenever the conditions prescribed are made to appear it is the duty of the commissioners to appoint additional officers.—*Pueblo County v. Smith*, 22 C. 535, 45 P. 358.

The office of the justice must be held within particular limits, but he may not be compelled by mandamus to hold office.—*Chapman v. Peo.*, 9 A. 269, 48 P. 154.

3708. County commissioners shall unite contiguous precincts

SEC. 3. The boards of county commissioners shall unite two or more contiguous justice precincts where parts of the two or more precincts lie within the corporate limits of a town or city, and may add thereto such adjoining precincts or parts thereof, as the said board of county commissioners may deem best. The powers, duties and jurisdiction of the officers of precincts thus united shall be equal in every respect; *Provided*, The term of of-

fice of no such justice or constable shall be construed to be abridged or extended thereby.

Legislation. Sec. 3708. Act 1891 § 2, cited under § 3707.

3709. Towns and cities not divided.

SEC. 4. It shall not be lawful hereafter to divide an incorporated town or city into two or more justice precincts.

Legislation. Sec. 3709. § 3 of Act of 1891 p. 116, cited under § 3707.

3710. Commissioners may reduce number of justices and constables—Books and records.

SEC. 5. That the board of county commissioners of any county in which the number of justices or constables has been, or may hereafter be, increased under the provisions of "An act providing for increasing the number of justices and constables in justice precincts of more than twenty thousand inhabitants," approved April 13th, 1891, may, if a majority of such board shall at any time be satisfied that the number of justices or constables is greater than the needs of the precinct require, enter their finding and decision to that effect in the records of such board, and thereupon the number of justices or constables shall be reduced, according to the number so found to be unnecessary, but shall not be reduced to less than two justices and two constables for each precinct. Such reduction shall not take effect so as to abridge the then existing term of any such officer; and thereafter only such number of justices and constables shall be elected or appointed as shall be necessary to make up the number to which such reduction has been made.

All books, records, papers and public property in the hands of any justice or constable whose office may be abolished under the provisions hereof, shall be turned over to any other justice or constable of said precinct, and the latter may proceed thereon as successor in office.

[Act of April 13, 1891, referred to, comprises sections 3707-3709.]

Legislation. Sec. 3710. Act 1897 p. 140 § 1, in the nature of a qualification or amendment to §§ 3706-3709.

Fifth—In suits for money claimed to be due upon settled accounts between individuals, in which the balance ascertained to be unpaid shall not exceed three hundred dollars.

Sixth—In all suits upon contracts or promises for rent, in which the amount claimed to be due does not exceed three hundred dollars.

Seventh—In actions for debt, for trespass in cutting timber, in which the amount claimed does not exceed three hundred dollars.

Eighth—In actions for money claimed to be due for specific articles of property, whether claimed to be due by bond, note or other instrument in writing, or upon a promise express or implied, in which the value of the property claimed does not exceed three hundred dollars.

Ninth—For all debts or demands claimed to be due, not exceeding three hundred dollars, in which the action of debt or assumpsit will lie.

Tenth—In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed three hundred dollars.

Eleventh—In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed three hundred dollars.

Twelfth—In all actions of trespass on personal property, and of trover and conversion, in which the damages claimed do not exceed three hundred dollars.

Thirteenth—In all cases of assault, assault and battery and affrays, in which the people are plaintiffs, in which they shall have exclusive original jurisdiction, unless in cases of cities or incorporated towns in which jurisdiction is otherwise conferred by law.

Fourteenth—In all actions against sheriffs, coroners and constables for malfeasance, misfeasance of nonfeasance in office, wherein the amount claimed does not exceed three hundred dollars.

Fifteenth—In all actions of trespass to mining claims or other real property, in which the amount claimed does not exceed three hundred dollars.

[Jurisdiction of justice in enforcing mechanic's lien on personal property. Section 4016.]

[Jurisdiction over lien of ranchmen, tavern keepers, etc., section 4016.]

[Jurisdiction in action to recover damages for violation of civil right. Section 611.]

Legislation. Sec. 3712. The first 14 paragraphs are Act 1861 p. 220 § 1. Paragraph 15 was added by Act 1862 p. 77 § 4. But the limit of jurisdiction was \$100 until R. S. p. 73 § 1 increased it to \$300 except in Arapahoe County. It was made \$300 in Arapahoe County by Act 1872 p. 111 § 1.

The text is the same as it is was printed in G. L. § 1482 and G. S. 1925.

CITATIONS.

This section referred to in connection with Sec. 3719 as to venue of actions.—*Wagner v. Hallack*, 3 C. 182. *Denver S. P. & P. Co. v. Roberts*, 6 C. 335, *Reynolds v. Larkins*, 10 C. 131, 14 P. 117.

If the justice had no jurisdiction the county court acquired none by appeal.—*Downing v. Florer*, 4 C. 210.

Where the property of a third person is attached he may intervene though its value exceeds \$300.—*Corthell v. Mead*, 19 C. 386, 35 P. 741.

This section cited in holding that a writ of replevin is not a summons within the meaning of the act of 1891. (Sec. 3725.)—*Duffield v. D. & R. G. R. Co.*, 5 A. 28, 36 P. 623.

3713. Demand reduced by credits.

SEC. 8. In all suits provided for in the preceding section, the jurisdiction of the justice shall be deemed to extend to cases in which the original claim, debt, demand or damages may have originally exceeded the sum of three hundred dollars, but which shall have been reduced by fair credits below that sum.

Legislation. Sec. 3713. Act 1861 p. 221 § 2. R. S. p. 394 § 2. G. L. § 1483. G. S. § 1926.

3714. Trespass and case.

SEC. 9. That the jurisdiction of justice of the peace be extended, so as to embrace all actions of "Trespass and trespass on

the case," where the damages claimed do not exceed three hundred dollars.

[Jurisdiction in forcible entry and detainer cases. Section 2605]

Legislation. Sec. 3714. Act 1874 p. 177 § 1. G. S. § 1927. Omitted in G. L.

3715. Replevin.

SEC. 10. Justices of the peace, in their respective counties, shall have jurisdiction in actions of replevin where the value of the property sought to be replevined and the damages claimed do not exceed three hundred dollars.

Legislation. Sec. 3715. Act 1861 p. 242 § 102. R. S. p. 418 § 102. G. L. § 1581. G. S. § 1928.

3716. Covenant.

SEC. 11. In addition to the civil causes wherein justices of the peace now have jurisdiction, jurisdiction is hereby conferred in actions of covenant where the damages claimed do not exceed three hundred dollars.

Legislation. Sec. 3716. Act 1877 G. L. § 1598. G. S. § 1929.

3717. Action in excess of amount—Title to realty—Boundaries—Justice certify cause to district court.

SEC. 12. In all civil actions before justices of the peace relating to real estate, if it shall be made to appear in any manner that the value of the property in controversy is in excess of said limit of the justice's jurisdiction, the justice shall at once suspend all proceedings therein, and certify and send said cause and transmit the papers therein to the district court of the same county. If in any action before a justice of the peace relating to real estate, it shall appear that the title or boundaries are in dispute, the justice shall certify the cause and transmit the papers to the district court of the same county. Causes so certified from justices of the peace shall be proceeded with in the courts to which they have been certified in all respects as if originally begun in the court to which they have been certified as aforesaid.

Legislation. Sec. 3717. Act 1877 G. L. § 1600. G. S. § 1930.

CITATIONS.

The effect of raising the question of title is to remove the cause to another court and not to defeat it.—*Klopper v. Keller*, 1 C. 412.

An action for trespass on land where plaintiff relied on possession alone was not within this section.—*Patrick v. Brown*, 36 C. 301, 85 P. 326.

3718. Justice may receive moneys.

SEC. 13. Justices of the peace, being duly qualified according to law, are authorized and empowered, and it is hereby made their duty, to receive money on all notes and demands which may have been placed in their hands for suit or collection, and also upon all judgments rendered by them prior to the issuing execution thereon.

Legislation. Sec. 3718. Act 1861 p. 221 § 3. R. S. p. 395 § 3. G. L. § 1484. G. S. § 1931.

3719. Venue of actions.

SEC. 14. Suit shall be commenced before justices in the township in which the debtor or person sued resides, unless the cause of action occurred in the township in which the plaintiff resides, in which case the suit may be commenced where the cause of action accrued or is specifically made payable.

Legislation. Sec. 3719. Act 1862 p. 77 § 10. R. S. p. 418 § 103. G. L. § 1582. G. S. § 1932.

CITATIONS.

Defendant may plead that he is a non-resident of the county and that the action did not accrue in the county where suit is pending.—*Melvin v. Latshaw*, 2 C. 83.

This section does not apply to debtors residing without the state.—*Wagner v. Hallack*, 3 C. 182. *Charles v. Amos*, 10 C. 277, 15 P. 417.

The jurisdiction of the justice of the peace must affirmatively appear.—*Downer v. Florer*, 4 C. 209.

The privilege to have the proceeding brought in the township in which defendant resides or in which the cause of action accrued may be waived. Appearing amounts to waiver.—*Denver S. P. & P. R. Co. v. Roberts*, 6 C. 335. *Hardenbrook v. Harrison*, 11 C. 10, 17 P. 73.

CITATIONS CONTINUED.

This section does not control in forcible entry and detainer actions.—*Reynolds v. Larkin*, 10 C. 131, 14 P. 116.

The word "township" is retained or employed inadvertently for the word "precincts."—*Garfield County Court v. Schwarz*, 13 C. 294, 22 P. 784.

A justice has jurisdiction of an action for wages for work performed in his precinct although the defendant resides in another county.—*Brewer v. Mock*, 14 A. 458, 60 P. 579.

By appearing specially and objecting to the irregularity of the summons without objecting to the venue, defendant waived the latter objection.—*School Dist. v. Waters*, 20 A. 108, 77 P. 255.

3720. If no justice in township.

SEC. 15. If no justice of the peace shall reside in the township in which the defendant resides, or in which the cause of action accrued, the suit shall be brought before the justice of the peace nearest to the residence of such debtor within the county.

Legislation. Sec. 3720. Act 1862 p. 77 § 11. R. S. p. 418 § 104. G. L. § 1583. G. S. § 1933.

CITATIONS.

The word "township" is retained inadvertently for the word "precinct."—*Garfield County Court v. Schwarz*, 13 C. 294, 22 P. 784.

B. PROCEEDINGS IN GENERAL.**Section.**

- 3721. Action, how commenced—Date of trial.
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B. PROCEEDINGS IN GENERAL.

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Section.

3734. Justices render judgment within four days.
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3745. Subpoena for witnesses—Form—Service.
3746. Four witnesses on one subpoena.
3747. Two witnesses to one fact—Fees.
3748. Trial without process—Agreement.
3749. Arbitration—Award—Entry on docket.

3721. Action how commenced—Date of trial.

SEC. 16. Every suit before a justice, except such as are hereinafter provided for in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz.:

STATE OF COLORADO, } ss.
.....County.

To People of the State of Colorado, to any constable of said
county, greeting:

You are hereby commanded to summon A. B. to appear before me, at..... on the..... day of....., ato'clock, to answer the complaint of C. D., for a failure to pay him a certain demand, not exceeding three hundred dollars, and hereof make due return as the law directs. Given under my hand and seal this.....day of....., 18....

....., J. P. (L. S.)

In which summons the justice shall specify a certain place, day and hour, for the trial, not less than five nor more than fifteen days from the date of such summons, at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants; or in case the defendant is a corporation, by reading the same and delivering a copy thereof to some officer, agent or clerk of such corporation; if such summons be returned "Not Served," the cause may be continued, and an alias summons issued, returnable in not less than five nor more than fifteen days from the date thereof, and such alias shall be served in like manner as original summons, not less than three days before the day set for the defendant's appearance.

Legislation. Sec. 3721. Act 1861 p. 222 § 5. R. S. p. 395 § 5. G. L. § 1486. G. S. § 1936. See notes to §§ 3724, 3725.

CITATIONS.

Section 856 repeals by implication this section as to service on corporations.—*Western U. T. Co. v. Conant*, 11 C. 112, 17 P. 107.

The provisions of this section requiring the summons to specify the place, day and hour are mandatory. The day and hour fixed is the time when the jurisdiction attaches, and not when the writ issues.—*Rice v. Am. Nat. Bank*, 3 A. 83, 31 P. 1025.

3722. Non-residents cost bond.

SEC. 17. No person who is not a resident of this state shall commence an action before a justice of the peace, until such non-resident shall file with the justice before whom such action may be brought, a bond, with sufficient security for the payment of all costs which may be brought, a bond, with sufficient security for the payment of all costs which may be awarded against the plaintiff, should he fail in his suit; which bond shall be in the following form, as near as may be, inserting the names of the parties, the county and state:

STATE OF COLORADO,
.....County. } ss.

A. B. vs. C. D.

Demand \$.

I, E. F., do enter myself security for all costs that may accrue in the above case, this.....day of....., 18....

E.....F..... (L. S.)

Legislation. Sec. 3722. Act 1861 p. 234 § 62. R. S. p. 410 § 62. G. L. § 1543. G. S. § 1934.

3723. Condition of bond.

SEC. 18. Such bond shall be signed by the security, and if the said plaintiff shall be defeated in his suit, discontinue or make default, and shall not, within ten days thereafter, pay to the justice all the costs that may have been occasioned to the defendant, to the justice and constable, jurors or witnesses, the justice shall issue his execution against the security for the amount thereof, accompanied with a bill of costs, in which shall be set down every particular charge. And if any suit shall be commenced by a non-resident, as aforesaid, without filing a bond for costs as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, and execution may issue therefor as in other cases.

Legislation. Sec. 3723. Act 1861 p. 235 § 63. R. S. p. 411 § 63. G. L. § 1544. G. S. § 1935.

3724. Summons how served.

SEC. 19. Summons issued by justices of the peace, in the state of Colorado, shall be served as follows: By delivering a copy thereof to the defendant, or by leaving a copy of the summons at the usual place of abode of the defendant, with some member of his or her family over the age of fifteen years.

[Service of summons in forcible entry and detainer. Section 2611.]

Legislation. Sec. 3724. G. S. § 1937. Act 1879 p. 109 § 1. entitled:

AN ACT

To regulate the Service of Summons and other Process Issued by Justices of the Peace.

This section supersedes § 3721 as to mode of service.

3725. Service of summons on corporations—Return of summons.

SEC. 20. In all suits brought in any justice court, police court or court not of record in this state, service of summons may be made upon private or foreign corporations in the manner following, to wit: when suit is brought in the county in which such corporation has its principal office, or in which its principal business is carried on, service may be made by delivering a copy of the summons to the president or other head of such corporation, or to the secretary, cashier, treasurer or general manager thereof, or, in case of the absence of said officers from the county, then upon any stockholder residing in the county in which such suit is brought. In all other cases service of summons may be made upon such corporation by delivering a copy thereof to the principal, local or station agent of such corporation, resident and employed in the county in which suit is brought; *Provided*, That, in all suits brought against corporations in the courts hereinbefore designated, summons shall be made returnable in not less than twenty days, nor more than thirty days from date of issuance of summons, and shall, to make service valid and effectual, be served at least ten days prior to the return day designated in the summons. In case of failure of service, alias and pluries summons, if necessary, may be issued. Nothing herein contained shall be construed to authorize the commencement of suit before any justice of the peace in any precinct or township other than that in which suit may be commenced by plaintiff, as is now provided by law.

Legislation. Sec. 3725. Act 1891 p. 101 § 1, entitled:

AN ACT

To provide for the service of summons in justice courts, police courts and courts not of record, upon private corporations.

This section supersedes § 3721 as to service on corporations.

CITATIONS.

A writ of replevin is not a summons within the meaning of this section.—*Duffield v. D. & R. G. Co.*, 5 A. 28, 36 P. 623.

3726. When defendant evades service—Copy left with whom.

SEC. 21. When any defendant shall evade the service of process and not listen to the same, or secrete himself, then the officer shall serve the same by leaving a copy at his place of residence, with some white person of the age of ten years or upwards, and in all such cases the constable shall make a special return when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case.

Legislation. Sec. 3726. Act 1861 p. 235 § 64. R. S. p. 411 § 64. G. L. § 1545. G. S. § 1939.

3727. Defendant may pay officer—Endorsement on summons.

SEC. 22. The justice shall endorse on the back of every summons or warrant the sum demanded by the plaintiff, with the costs due thereon; and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from such debt and costs.

Legislation. Sec. 3727. Act 1861 p. 224 § 12. R. S. p. 398 § 12. G. L. § 1493. G. S. § 1938.

CITATIONS.

The amount endorsed upon the summons concludes the plaintiff as to the amount of his recovery.—*Meyer v. Helland*. 3 A. 536. 34 P. 482.

It was the duty of the justice to endorse on the back of the summons the sum demanded with the costs accrued.—*Duffield v. D. & R. G. R. Co.*, 5 A. 28, 32 P. 622.

3728. Tender of payment—Costs.

SEC. 23. When the defendant, upon whom any summons or warrant, issuing from a justice of the peace, shall be served, shall pay or tender to the constable the amount actually due, with all

costs then accrued, and shall prove the same upon trial, and shall bring the money forward and deposit it with the justice of the peace, no costs which shall thereafter accrue shall be adjudged against him, but the plaintiff shall pay the same.* When any justice of the peace shall render a judgment against any defendant and it shall have appeared upon the hearing that before suit was brought said defendant tendered to the plaintiff a sum of money equal to, or in excess of, that found by the justice of the peace to be due said plaintiff, the justice of the peace shall tax all of the costs of the action to the plaintiff.

Legislation. Sec. 3728. Act 1907 p. 494 § 1 amending G. S. § 1967. G. L. § 1541. R. S. p. 410 § 60. Act 1861 p. 234 § 60. The amendment adds all that follows the star.

3729. Offer of compromise—Notice of acceptance.

SEC. 24. In all cases hereafter brought in justice courts the defendant may, at any time before trial or judgment, serve upon the plaintiff a written offer to allow judgment to be taken against him for the sum or property or to the effect therein specified. If the plaintiff accept the offer and gives notice thereof within two days, he may file the offer with an affidavit of notice of acceptance, and the justice shall thereupon enter judgment accordingly. If the notice of acceptance be not given the offer shall be deemed withdrawn and shall not be given in evidence, but if the plaintiff shall fail to obtain a more favorable judgment he shall not recover costs from the time of the offer.

Legislation. Sec. 3729. Act 1893 p. 303 § 1, entitled:

AN ACT

Concerning Offers to Compromise Cases in Justices' Courts.

3730. When defendant does not appear plaintiff prove demand.

SEC. 25. If the defendant, being served with process, shall not appear at the hour appointed for his appearance in such process, or in one hour thereafter, and no sufficient reason is assigned to the justice why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence

of said defendant, but shall not give judgment for the plaintiff, unless the said plaintiff fully prove his demand, in the same manner as if the defendant had been present and denied the same.

Legislation. Sec. 3730. Act 1861 p. 222 § 6. R. S. p. 396 § 6. G. L. § 1487. G. S. § 1940.]

CITATIONS.

Requiring an appearance at an impossible date confers no jurisdiction. The day and hour fixed in the summons for its return is the time when jurisdiction attaches.—*Rice v. Am. Nat. Bank*, 3 A. 83, 31 P. 1025.

3731. When plaintiff does not appear suit dismissed—Costs.

SEC. 26. If the plaintiff or his agent shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice why the plaintiff or his agent does not appear, the justice shall dismiss the suit and the plaintiff shall pay the costs, unless the defendant shall consent that such suit shall be continued to another day, in which case the same proceedings shall take place at the second day so fixed for the trial as above provided; but this section shall not require the dismissal of a suit on a note placed in the hands of a justice for collection.

Legislation. Sec. 3731. Act 1861 p. 222 § 7. R. S. p. 396 § 7. G. L. § 1488. G. S. § 1941.

CITATIONS.

Where plaintiff failed to appear at the time fixed or to give sufficient reason for non-appearance it was the duty of the justice to dismiss the cause.—*Yenizer v. Thayer*, 10 C. 65, 14 P. 54.

A plea of another suit pending held insufficient because it did not appear that the first suit had not been discontinued by virtue of this section.—*Craig v. Smith*, 10 C. 221, 15 P. 338.

3732. Defendants sued jointly—Appearance of one—Separate claims.

SEC. 27. If two or more persons shall be sued jointly before any justice of the peace, and all of such defendants shall have had notice as aforesaid by warrant or summons, the appearance

of any of the said defendants at the time of trial shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such notice, the justice shall, if the plaintiff's demand be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due against so many of the defendants jointly as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice that any two or more of the defendants are severally indebted to the plaintiff upon separate and different debts, or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to bring in such separate claims, nor shall the plaintiff be barred by the determination of his suit against such joint defendants, from prosecuting his suit against the respective defendants, for the recovery of such separate demands.

Legislation. Sec. 3732. Act 1861 p. 223 § 8. R. S. p. 396 § 8. G. L. § 1489. G. S. § 1942.

3733. Judgment against one or more—Scire facias—Costs.

SEC. 28. Where there are several joint debtors, and all can not be served with process, the justice may, on motion of plaintiff, continue the cause, and issue alias summons as to the defendants not served; or may render judgment against such defendants as are served, and the plaintiff may at any time thereafter sue out a summons in the nature of a scire facias against the defendants not served, briefly reciting such suit and the judgment therein, and commanding that such defendants be summoned to show cause why they should not be made parties to such judgment, which summons shall be served in the same manner as other summons; on the return thereof served, the justice shall proceed to hear and determine the cause in the same manner as if such defendants had been originally served with summons; and the judgment, if for the plaintiff, shall be that such plaintiff recover of such defendants, together with the defendants in the former judgments, his debt or damages, and his costs. If any sum of money hath been paid or collected on such former judgment, the amount shall be

credited upon such subsequent judgment, and only the residue of the plaintiff's debt or demand shall be collected.

Legislation. Sec. 3733. Act 1861 p. 223 § 9. Enlarged by R. S. p. 397 § 9. G. L. § 1490. G. S. § 1943. See Code § 254.

3734. Justices render judgment within four days.

SEC. 29. It shall be the duty of justices of the peace, and they are hereby required, to render judgment in any cause or causes before them pending, within four days after such cause or causes shall have been submitted for final decision, and to cause such judgment to be entered in their dockets, and to attest the same with their signatures.

Legislation. Sec. 3734. Act 1887 p. 326 § 1, entitled:

AN ACT

Requiring justices of the peace to render judgments within four days after causes shall have been submitted for final decision.

3735. Penalty for failure to render judgment within four days.

SEC. 30. If any justice of the peace shall wilfully refuse or neglect to render judgment, as provided in section 1, he shall forfeit all costs earned in such cause or suit, and any litigant in such cause or suit may recover of such justice of the peace any sum by him paid as costs or for attorney's fees therein, together with any damages immediately arising out of such refusal or neglect, and such recovery may be had in any court of competent jurisdiction.

[Section 1 referred to is section 3734.]

Legislation. Sec. 3735. Act 1887 § 2, cited under § 3734.

3736. Parties must bring forward all demands.

SEC. 31. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, existing at the time of commencing the suit, which are of such a nature as to be consolidated into one action or defense, and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any debt or demand.

Legislation. Sec. 3736. Act 1861 p. 225 § 18. R. S. p. 399 § 18. G. L. § 1499. G. S. § 1944.

CITATIONS.

This section does not change the rule that a cause of action arising out of contract can not be set off against an action of trespass or trover.—*Goldberger v. Leibowitz*, 42 C. 101, 93 P. 1109.

In an action for one months rent then due, the remaining installments are not an existing demand within this section.—*Curtis v. Hammond*, 43 C. 279, 95 P. 922.

3737. Claims acquired after suit not admitted.

SEC. 32. No party shall be permitted to introduce at the trial any bond, note, debt or other claim against his adversary, which he shall have acquired after the commencement of the suit.

Legislation. Sec. 3737. Act 1861 p. 225 § 17. R. S. p. 399 § 17. G. L. § 1498. G. S. § 1945.

3738. Continuance—Ten days—Consent.

SEC. 33. Previous to commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath or that of a credible witness, that the said party cannot safely proceed to trial on account of the absence of a material witness, or on account of any other cause or disability which would prevent him from obtaining justice at such trial; and if the justice be satisfied that the party so applying cannot safely proceed to trial, and also that the party so applying has used due diligence to be ready at the time of trial first appointed, and that his not being ready is not the effect of such party's own neglect or intention, then the said justice shall order the trial of said cause to be deferred to another day and hour, within ten days, to be by him appointed, and the party praying such continuance shall pay all costs occasioned thereby; *Provided*, The justice may at any time continue any case without oath, if the parties consent, or if but one party be present and shall consent, or if he shall deem it essential to justice to do so for any good cause shown.

Legislation. Sec. 3738. Act 1861 p. 223 § 10. R. S. p. 397 § 10. G. L. § 1491. G. S. § 1946.

3739. Non-resident witness—Continuance—Deposition.

SEC. 34. In all cases before justices of the peace either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness; which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the district courts, in this state.

Legislation. Sec. 3739. Act 1861 p. 228 § 32. R. S. p. 403 § 32. G. L. § 1513. G. S. § 1966.

3740. Trial—Judgment—Interest—Costs—Interest on judgment.

SEC. 35. When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party who shall be proved to be indebted to the other, for so much money in dollars and cents as shall appear to be due, with costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff, for the costs of suit only; and if such judgment be rendered upon any note or bond, or for a balance due upon a settled account, the justice shall allow interest from the time when the same became due, and include the same in the said judgment; and in all cases the judgment shall bear interest at the rate of ten per cent. per annum until paid.

Legislation. Sec. 3740. Act 1861 p. 224 § 11. R. S. p. 398 § 11. G. L. § 1492. G. S. § 1947.

The last clause of the text as to the rate of interest on judgments is superseded by Sec 3162 and as to the rate of interest on notes and other items mentioned it is evidently the legal rate of 8 per cent. that governs. The 10 per cent. in the last clause referred to judgments only.

3741. Evidence under oath—Signature.

SEC. 36. All evidence before a justice of the peace shall be under oath, by parol, except when it shall be necessary to exhibit the signature or handwriting of a party against him, and except such evidence as shall be taken by deposition, as hereinafter mentioned.

Legislation. Sec. 3741. Act 1861 p. 224 § 13. R. S. p. 399 § 13. G. L. § 1494. G. S. § 1948.

3742. Denial of signature—Oath.

SEC. 37. No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument upon which suit shall be founded, or which shall be offered as a set-off or acquittance for the debt demanded in such suit, unless the said denial be under the oath of the party so denying the signature purporting to be his or her own.

Legislation. Sec. 3742. Act 1861 p. 224 § 14. R. S. p. 399 § 14. G. L. § 1495. G. S. § 1949.

CITATIONS.

A corporation may deny its signature by the oath of its authorized agent.—*Barrett M. Co. v. Tappan*, 2 C. 127.

This section might excuse a plaintiff from establishing the genuineness of the signature of a maker to time checks, but some evidence as to the agency of the person who made them was indispensable.—*Rio Grande Ex. Co. v. Coby*, 7 C. 302, 3 P. 483.

On appeal to the county court a defendant may file his affidavit denying the genuineness of the signature to notes.—*Assig v. Pearsons*, 9 C. 588, 13 P. 720.

This section cited in holding that in a claim against an estate proof of payment of interest on a note by the maker was prima facie proof of its execution.—*McKay v. Bank*, 27 C. 53, 59 P. 747.

3743. Sickness of witness—Deposition.

SEC. 38. If any witness, residing within the county wherein a suit shall be pending before a justice, shall be unable to attend on account of age, sickness or other cause, it shall be lawful for the justice before whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness in writing; and the justice before whom suit shall be pending shall adjourn the trial not more than six days for that purpose, and shall give both parties notice of the time and place of taking such deposition.

Legislation. Sec. 3743. Act 1861 p. 224 § 15. R. S. p. 399 § 15. G. L. § 1496. G. S. § 1950.

SEC. 39. If any witness whose testimony shall be material in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it may take his or her or their deposition or depositions before any justice of the peace in the county in which such witness or witnesses reside, and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

CITATIONS.

On appeal to the county court a deposition is taken in that court as though the suit had been begun there.—*Wilson v. Welch*, 12 A. 186, 55 P. 201.

SEC. 40. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpoena in the following form as nearly as the case will admit, viz.:

STATE OF COLORADO, } ss.
.....County.

The People of the State of Colorado, to A. B.:

You are hereby required to appear before me, at my....., on the..... day of....., at.....o'clock,....., then and there to testify the truth, in a matter in suit, wherein C. D. is plaintiff, and E. F. defendant; and this you are not to omit under the penalty of the law. Given under my hand and seal this..... day of....., 18....

....., J. P. (L. S.)

Which subpoena may be served by a constable, or any other per-

son, by reading the same to the witness; but no mileage shall be allowed to the person serving the same.

Legislation. Sec. 3745. Act 1861 p. 225 § 19. R. S. p. 400 § 19. G. L. § 1500. G. S. § 1952.

3746. Four witnesses in one subpoena.

SEC. 41. In all cases where a justice of the peace is required to issue a subpoena at the instance of either party to a suit it shall be his duty to insert the names of four witnesses in each subpoena, if the party demanding the same shall require the attendance of that number; and in no case shall a justice of the peace be permitted to charge and receive pay for any subpoena commanding the citation of a less number, where as many as four shall be required by the same party at the same time to be used in the same suit.

Legislation. Sec. 3746. Act 1861 p. 225 § 20. R. S. p. 400 § 20. G. L. § 1501. G. S. § 1953.

3747. Two witnesses to one fact—Fees.

SEC. 42. Each witness so summoned shall be entitled to the fees allowed by law, to be taxed with the other costs of the suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case to testify to one fact, on the same side, the party requiring such extra witnesses shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending.

Legislation. Sec. 3747. Act 1861 p. 226 § 21. R. S. p. 401 § 21. G. L. § 1502. G. S. § 1954.

3748. Trial without process—Agreement.

SEC. 43. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases.

Legislation. Sec. 3748. Act 1861 p. 226 § 23. R. S. p. 401 § 23. G. L. 1504. G. S. § 1955.

3749. Arbitration—Award—Entry on docket.

SEC. 44. In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the same award on his docket, and give judgment according thereto.

Legislation. Sec. 3749. Act 1861 p. 226 § 24. R. S. p. 401 § 24. G. L. § 1505. G. S. § 1956.

C. JURY TRIALS.

Section. .

3750. Jury trial had on demand—Fees.

3751. Trials of right of property—Jurors—Fees.

3752. Summons to jurors.

3753. Attachment for witnesses and jurors—Fine.

3754. Challenge for cause—Talesmen—Peremptory challenges.

3750. Jury trial had on demand—Fees.

SEC. 45. At any time before any evidence is given in any suit before a justice of the peace, either party, upon advancing the jury fees, may demand to have the cause tried by a jury; whereupon, it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of* not less than three nor more than twelve men, as the party demanding the jury may direct; but in all cases where a less number than twelve may be directed, the adverse party may have the same increased to any number not exceeding twelve by advancing the additional fees necessary for such increased number,* and the said jury shall be impaneled as soon as may be, the justice adjourning the cause, if necessary, to any time not exceeding three days, for that purpose. The jury, when impaneled, shall be sworn by the justice to try the cause according to the evidence, and the justice shall enter judgment upon their verdict according to the finding thereof.

Legislation. Sec. 3750. Act 1889 p. 221 § 1 amending G. S. § 1953. G. L. § 1506. R. S. p. 401 § 25. Act 1861 p. 226 § 25. Before amendment the section read between the stars "Six men or twelve if a less number be objected to."

CITATIONS.

This section cited in holding that under the practice act upon judgment by default in the probate court the inquisition as to damages should be by jury of twelve.—*Colo. Springs Co. v. Hewitt*, 3 C. 277.

This section cited in holding that claims against an estate may be tried in county courts before a jury.—*Charles v. Eskleman*, 5 C. 108.

In the trial of a civil case the jury may consist of any number the parties agree upon or accept without objection.—*Corthell v. Mead*, 19 C. 388, 35 P. 741.

3751. Trials of right of property—Jurors—Fees.

SEC. 46. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve, unless the parties shall agree upon a larger number, not exceeding twelve, in which case the number agreed upon shall constitute the jury; *Provided*, That either party shall have the right to require twelve jurors upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party.

Legislation. Sec. 3751. Act 1861 p. 227 § 27. R. S. p. 402 § 27. G. L. § 1508. G. S. § 1959.

CITATIONS.

In the trial of a civil case the jury may consist of any number the parties agree upon or accept without objection.—*Corthell v. Mead*, 19 C. 388, 35 P. 741.

3752. Summons to jurors.

SEC. 47. The following shall be the form of a writ for summoning the jurors, viz.:

STATE OF COLORADO, }
..... County. } ss.

The people of the state of Colorado to any constable of said county,
greeting:

We command you to summon.....lawful men of your
county to appear before me at....., on the.....day
of....., 18...., who are not of kin to A. B., plaintiff,
or to C. D., defendant, to make a jury between said parties in a
plea of.....; because as well the said plaintiff as the
said defendant have put themselves upon the country for trial;
and have you then and there the names of the jury, and this writ.

Witness my hand and seal, this.....day of.....
....., J. P. (L. S.)

Legislation. Sec. 3752. Act 1861 p. 227 § 26. R. S. p. 402 § 26.
G. L. § 1507. G. S. § 1960.

3753. Attachment for witnesses and jurors—Fine.

SEC. 48. In all cases where a witness shall be duly served with a subpoena, and shall fail to attend at the trial, conformably thereto, and in all cases where a person shall be summoned as a juror to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice the body of such juror or witness so failing to attend as aforesaid, to show cause why he should not be fined for a contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him in any sum not less than one dollar nor more than ten dollars, or wholly discharge him if satisfactory excuse be made.

Legislation. Sec. 3753. Act 1861 p. 227 § 28. R. S. p. 402 § 28. G. L. § 1509. G. S. § 1961.

3754. Challenge for cause—Talesmen—Peremptory challenges.

SEC. 49. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall, for any cause, to be judged of by the justice, be considered as a partial or improper juror, in that case the justice shall discharge such juror; and when, by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury, instantly, from among the bystanders or other persons in his bailiwick, which summons shall be verbal; and the person so summoned shall be bound to serve on such jury, and on refusal or failure to do so may be attached and fined for contempt as aforesaid. And in all cases of jury trial before a justice of the peace, each party shall be entitled to three peremptory challenges.

Legislation. Sec. 3754. Act 1861 p. 227 § 29. Amended by Act of 1862 p. 77 §§ 5, 6. R. S. p. 402 § 29. G. L. § 1510. G. S. § 1962.

D. EXECUTIONS.**Section.**

- 3755. Issuance of executions.
- 3756. Direction and form of execution.
- 3757. Real and personal property bound by execution.
- 3758. Levy of execution on real estate—Costs.
- 3759. Constable endorse time writ received—Levy—Notice—Sale.
- 3760. Execution to other county—Certificate.
- 3761. Constable in other county execute.
- 3762. Constable take and keep property—Delivery bond.
- 3763. Constable pay to plaintiff or justice—Justice post list of witness fees.
- 3764. Constable may act after term expires—Sureties liable.
- 3765. Misfeasance and nonfeasance of constable—Liability.

3755. Issuance of executions.

SEC. 50. Executions in justices' courts may be issued immediately after rendition of judgment.

Legislation. Sec. 3755. Act 1862 p. 77 § 8. R. S. p. 403 § 33. G. L. § 1514. G. S. § 1967. Before the act of 1862 execution could not issue until expiration of 20 days except on affidavit of danger of loss. Act 1861 p. 228 § 33.

CITATIONS.

Under this section a party obtaining judgment before a justice is of right entitled to the remedy by execution immediately after rendering of judgment.—*Brown v. Bell*, 46 C. 167, 103 P. 381. *Bishop v. Poundstone*, 11 A. 76, 62 P. 223.

3756. Direction and form of execution.

SEC. 51. All executions issued by a justice of the peace shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within thirty days from the date; such execution shall be levied only on personal property, and shall be in the following form, as nearly as may be, viz.:

STATE OF COLORADO, }
County. } ss.

The people of the state of Colorado to any constable of said county, greeting:

We command you, that of the goods and chattels of A. B. in your county, you make the sum of.....dollars and.....cents, debt, and.....dollars andcents, costs, which C. D. lately recovered before me, in a certain plea against the said A. B., and hereof make return within thirty days from this date. Given under my hand and seal this.....day of....., 18..
, J. P. (L. s.)

Legislation. Sec. 3756. Act 1861 p. 228 § 34. R. S. p. 403 § 34. G. L. § 1515. G. S. § 1968.

CITATIONS.

The sale of personal property under an execution must be conducted by the officer holding the execution. An auctioneer may be employed to call off the property.—*Stacy v. Bernard*, 20 A. 295, 78 P. 616.

3757. Real and personal property bound by execution.

SEC. 52. The personal property of every defendant in a judgment before a justice of the peace shall be bound for the payment of such judgment from the delivery of the execution issued thereon to the constable, and the real property of such defendant shall be bound as aforesaid from the date of the filing of a transcript of the judgment in the clerk's office, as provided for in this act.

[Exemptions, sections 3627-3636.]

Legislation. Sec. 3757. Act 1861 p. 233 § 57. R. S. p. 409 § 57. G. L. § 1538. G. S. § 1969.

CITATIONS.

An execution in the hands of a constable is a lien upon defendant's chattels superior to a chattel mortgage subsequently executed, though the mortgagee assumes possession before any levy is made.—*Lewis v. Smith*, 45 C. 561, 101 P. 763.

3758. Levy of execution on real estate—Costs.

SEC. 53. When it shall appear by the return of the execution first issued, as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs, within the county in which judgment is rendered, and it is desired by the plaintiff to have the same levied upon real property in that or any other county, it shall be lawful for the justice to certify to the clerk of the district court of the county in which such judgment was rendered, a transcript, which shall be filed by said clerk and recorded by him in a book kept for that purpose, at the request and cost of any person interested, either in the judgment or proceedings had under the same: the fee for recording the transcript shall be taxed in the bill of costs against the defendant: such judgment shall thenceforward have all the effect of a judgment of the said district court and execution shall issue thereon out of that court as in other cases.

Legislation. Sec. 3758. Act 1861 p. 229 § 37. R. S. p. 404 § 37. G. L. § 1518. G. S. § 1977.

CITATIONS.

This section referred to in considering when the lien of a judgment filed with the district court is barred by the statute of limitations.—*Brown v. Bell*, 46 C. 165, 103 P. 380.

3759. Constable endorse time writ received—Levy—Notice—Sale.

SEC. 54. Every constable to whom an execution shall be delivered shall endorse on the back of the same an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same, endorsing also on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied; and shall appoint a day and hour for the sale of such property, giving ten days' previous notice of such sale by advertisement, in writing, to be posted up at three public places in the county; and on the day so appointed the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder.

[For exemptions, see sections 3627-3636.]

[Penalty for selling exempt property, section 3634.]

Legislation. Sec. 3759. Act 1861 p. 233 § 58. R. S. p. 409 § 58. G. L. § 1539. G. S. § 1970.

3760. Execution to other county—Certificate.

SEC. 55. When it shall appear, by the return of any execution, issued as aforesaid, that the defendant has not personal property within the county sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county, in which it is alleged that the defendant has personal property, the justice shall issue such execution, directed to any constable of the county where such property shall be said to be, to which execution shall be attached an official certificate of the county clerk of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice, so issuing, was at the time of issuing said execution a justice of the peace in and for said county, and no constable shall be bound to execute any such process unless so authenticated.

Legislation. Sec. 3760. Act 1861 p. 229 § 35. R. S. p. 404 § 35. G. L. § 1516. G. S. § 1971.

3761. Constable in other county execute.

SEC. 56. When an execution shall be issued to another county,

as provided in the preceding section, it shall be the duty of the constable receiving the same to proceed to the execution of the same, and make return as in other cases.

Legislation. Sec. 3761. Act 1861 p. 229 § 36. R. S. p. 404 § 36. G. L. § 1517. G. S. § 1972.

3762. Constable take and keep property—Delivery bond.

SEC. 57. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for safe keeping of the same; *Provided*, That if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be lawful for the said constable to allow the defendant to keep the same, if the said defendant shall give bond to the said constable, in double the amount of the execution, with good security, conditioned for the delivery of said property to the same constable, at the time and place of sale, to be named in the bond; and if the said property shall not be delivered, as aforesaid, at the time and place of sale, the constable having the execution may proceed to levy the same upon the same or any other property of the defendant, or upon the property of the security in such bond; and shall sell the same, giving two days' public notice of such sale, by advertisement, to be posted at one public place.

Legislation. Sec. 3762. Act 1861 p. 234 § 59. R. S. p. 409 § 59. G. L. § 1540. G. S. § 1973.

3763. Constable pay to plaintiff or justice—Justice post list of witness fees.

SEC. 58. On the return of all executions, the constable shall pay over to the justice of the peace who issued the same all money not previously paid over to the plaintiff, and also all witness fees which remain unpaid to any witness; and it shall be the duty of the justice of the peace to post up in his office, at least once in three months, a list of all witness fees in his hands, and the name or names or the persons to whom they belong; and for a failure to comply with this provision a justice of the peace shall be liable to a fine of fifty dollars, to be recovered in an action of debt in the name and behalf of the county.

Legislation. Sec. 3763. Act 1861 p. 234 § 61. R. S. p. 410 § 61.
G. L. § 1542. G. S. § 1974.

3764. Constable may act after term expires—Sureties liable.

SEC. 59. Any constable to whom an execution shall have been delivered, and whose term of office shall expire before the expiration of the time within which the return of such execution is required by law, shall be authorized to proceed in all matters relating to said execution, and in the same manner to collect the same, that he might have done had the term of office of such constable not have expired; and the constable and sureties shall be liable for any neglect of duty, and for all moneys collected upon such executions in the same manner and to the same extent they would have been if the term of office of such constable had not expired.

Legislation. Sec. 3764. Act 1861 p. 239 § 83. R. S. p. 415 § 83.
G. L. § 1562. G. S. § 1975.

3765. Misfeasance or nonfeasance of constable—Liability.

SEC. 60. If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt or claim be wholly or in part lost, or if any special damages shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable in the discharge of any official duty, the party aggrieved may have his action in the district court, or, when the amount claimed does not exceed three hundred dollars, before any justice of the peace of the proper county, against such constable, and his securities on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment upon which the original execution issued.

Legislation. Sec. 3765. Act 1861 p. 240 § 88. R. S. p. 416 § 88.
G. L. § 1567. G. S. § 1976.

E. ATTACHMENTS.

Section.

- 3766. Attachment—Affidavit—Causes.
- 3767. Debts not due—Rebate of interest—Judgment—Dismissal.
- 3768. Attachment bond.
- 3769. Contents of writ.
- 3770. Traverse of affidavit—Issue—Trial.
- 3771. Intervention by creditors.
- 3772. Dismissal by one creditor not affect others.
- 3773. Final judgment pro rated—Surplus.
- 3774. Writ first levied acquires jurisdiction—Transfer of causes.
- 3775. Insolvent defendant—Debts not due—Creditors pro rate—Transfer of causes.
- 3776. Undertaking by defendant to secure plaintiff.
- 3777. Property subject to attachment.
- 3778. Debits, credits, etc., how attached—Notice to garnishee.
- 3779. Notice to garnishee—Liability.
- 3780. Examination of garnishee.
- 3781. Constable's duty—Statement of garnishee.
- 3782. Trial of right to property—Notice—Damages.
- 3783. Trial of exemption.
- 3784. Order of sale—Execution—How sale conducted.
- 3785. Re-delivery of property.
- 3786. Release of property by bond—Appraisement—Sureties justify.
- 3787. Motion to dissolve attachment.
- 3788. Return of attachment writ.
- 3789. Attachment on Sunday—Holiday.
- 3790. Non-resident defendant—Notice—Trial.
- 3791. If defendant flees, constable follow and seize.
- 3792. Summons to garnishee—Trial—Judgment—Appeal.

3766. Attachment—Affidavit—Causes.

SEC. 61. If any creditor or credible person for him, shall make and file with any justice of the peace his affidavit setting forth that the defendant in such affidavit named is justly indebted to such creditor in a sum of money not exceeding three hundred dollars, upon a contract expressed or implied, stating the amount of such indebtedness, as near as may be, and shall also allege any one or more of the following grounds of attachment:

First—That the said debtor is a foreign corporation.

Second—That the said debtor is not a resident of this state.

Third—That the said debtor conceals himself or stands in

defiance of an officer, so that process of law cannot be served upon him, or that said debtor has been for four months last past absent from the state, or that for four months the whereabouts of said debtor have been unknown, and the debt for which suit is brought has been due during the said period of four months.

Fourth—That the said debtor has departed or is about to depart from this state, with intent to have his property or a material part thereof, removed from the state, or that said debtor is about to remove his property from the state with intent to hinder, delay or defraud his creditors.

Fifth—That said debtor has conveyed, transferred or assigned or is about to convey, transfer or assign his property, with intent to hinder, delay or defraud his creditors.

Sixth—That said debtor has concealed, removed or disposed of or is about to conceal, remove or dispose of his property, with the intent to hinder, delay or defraud his creditors.

Seventh—That the said debt is for an article or articles the price or value of which should have been paid at the time of the delivery thereof, and which the said debtor failed or refused to do.

Eighth—That the debt is for work and labor, or for any services rendered by the plaintiff, or his assignor, at the instance of the defendant.

Ninth—That the debt is for farm products, house rent, household furniture and furnishings, fuel, groceries and provisions, clothing and wearing apparel for the debtor and his family or any of them, or for any of said articles.

Tenth—That the said debtor fraudulently contracted or incurred the debt, or by false representation or false pretense, or by any other fraudulent pretense, procured the money, goods, chattels or effects of the plaintiff, the justice of the peace may, at the time of issuing the summons in the action, or at any time afterwards before final judgment in the action, issue a writ of attachment against the personal property of the said debtor within his county, not by law exempt from execution, as security for any judgment which the plaintiff may recover in said action.

[For attachments in courts of record see Attachments, Chapter 6, Code.]

Legislation. Sec. 3766. Act 1905 p. 282 § 1 amending Act 1895 p. 131 § 1, which amended Act 1894 p. 33 § 1, which amended G. S. § 2000. Act 1881 p. 38 § 2, which superseded Act 1879 p. 17 § 1.

An act of 1861 p. 241 §§ 97 and 98 gave a writ of attachment in justice courts upon like conditions as in courts of record. Reprinted in R. S. p. 417 §§ 98 and 99. An amendatory act of 1876 p. 26 §§ 13-21 renewed the authority of justice courts to issue the writ, but repealed these §§ 98 and 99. The code of 1877 § 447 repealed the whole of the 1876 act. The G. L. of 1877 printed said §§ 98 and 99 as its §§ 1576 and 1577, but in the errata p. XVII. noted the fact of the repeal. Under this state of facts it left it doubtful whether justices had any jurisdiction in attachment cases after 1879, which led to the passage of the Act of 1881, containing the text, with an emergency clause.

CITATIONS.

When the grounds of an attachment have been traversed, if the action be to recover the price of chattels and the defendant denies the sale, evidence that he retained and mortgaged the goods is admissible to overthrow his contention.—*Mt. Lincoln Coal Co. v. Lane*, 23 C. 122, 46 P. 632.

Failure to take and use a carriage and horses according to the terms of an agreement is not ground of attachment under clause 7.—*Kilpatrick v. Inman*, 46 C. 514, 105 P. 1080.

Fraud relied upon as a ground of attachment must relate to facts then or theretofore existing.—*Id.*

An attachment may be issued in a suit to recover unliquidated damages for a breach of contract, where the contract furnishes a standard in accordance with which the damages can be made definite by proof.—*Hyman v. Newell*, 7 A. 80, 42 P. 1017.

After an attachment had been issued and levied the ground therefor was repealed. Held that notwithstanding the repeal the attachment should have been sustained.—*Day v. Madden*, 9 A. 465, 48 P. 1054.

3767. Debts not due—Rebate of interest—Judgment—Dismissal.

SEC. 62. Actions may be commenced and writs of attachments may issue as hereinbefore prescribed upon debts and liabilities not yet payable, if the affidavit states any one of the grounds of attachment mentioned in this act, except in the first, second and third: *Provided*, That in any such cases, if the ground of attachment fails to be proved, no judgment shall be rendered and the action shall be dismissed; *Provided, further*, That a rebate of interest from the time when the judgment is rendered until the maturity of the debt shall be allowed in all cases where

a judgment in favor of the plaintiff is rendered under the provisions of this section.

Legislation. Sec. 3767. G. S. § 2003. Act 1879 p. 18 § 4, entitled:

AN ACT

In relation to Attachments Issued out of Justices' Courts.

CITATIONS.

In an attachment upon notes not due defendant was not entitled to judgment on the merits when plaintiff brought himself within the provisions of the statute.—*Hurligen v. Kantrowitz*, 15 C. 443, 24 P. 872.

3768. Attachment bond.

SEC. 63. No writ of attachment shall be issued by the justice of the peace until there has been executed and filed in his office by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking in at least double the amount of the plaintiff's claim, conditioned that the plaintiff shall pay the defendants all damages and costs which the defendant shall sustain by reason of the attachment, if the same was wrongfully obtained.

Legislation. Sec. 3768. G. S. § 2001. Act 1879 p. 18 § 2, cited under § 3767.

3769. Contents of writ.

SEC. 64. The writ of attachment shall be addressed and delivered to any constable of the proper county, and shall require him to attach the goods, chattels, stocks, or interest in stocks, rights, credits, moneys and effects of the defendant in his county, not exempt by law from execution, or so much thereof as will satisfy the plaintiff's claim, to be stated in the affidavit, and the probable costs of the action.

Legislation. Sec. 3769. G. S. § 2002. Act 1879 p. 19 § 3, cited under § 3767.

CITATIONS.

No statute authorizes an execution of process from justice's courts in civil actions by sheriffs or their deputies.—*Porter v. Stapp*, 6 C. 34.

This section cited in holding that the officer must take personal property into his care and possession.—*Crisman v. Dorsey*, 12 C. 572, 21 P. 922.

This section cited in holding that it is the duty of the officer to set aside exempt property.—*Harrington v. Smith*, 14 C. 382, 23 P. 333.

3770. Traverse of affidavit—Issue—Trial.

SEC. 65. The defendant, or his agent or attorney, may at any time before the trial of the question of indebtedness by an affidavit, put in issue the grounds of attachment alleged in the affidavit upon which the writ was issued. If upon trial of the issue thus made the plaintiff shall establish the truth of any one of the grounds of attachment alleged in his affidavit, the attachment shall be sustained. If upon trial of the issues the plaintiff wholly fail to establish any sufficient ground for attachment, the attachment shall be dissolved at the cost of the plaintiff, but if the debt is due at the time of the trial, the action may proceed to judgment after the attachment is dissolved, as in actions where no attachment was issued.

Legislation. Sec. 3770. G. S. § 2004. Act 1879 p. 19 § 5, cited under § 3767.

CITATIONS.

When the grounds of an attachment have been traversed and there is no evidence to sustain any one of them the attachment should be dissolved.—*Mt. Lincoln Coal Co. v. Lane*, 23 C. 121, 46 P. 632.

3771. Intervention by creditors—Affidavit.

SEC. 66. When an attachment has been issued and a levy made thereunder, or garnishment process served, the justice of the peace shall, upon the return day of the summons in said action, which shall not be less than five nor more than ten days from the issuing thereof, continue the hearing in said cause for twenty days; and any creditor of the defendant, upon making and filing, before the expiration of said twenty days, an affidavit, and undertaking, as hereinbefore required of the plaintiff, together with a copy of his claim or demand against the defendant,

shall be made a party plaintiff in such action, and may have like remedies against the defendant to secure his claim or demand as are given to the original plaintiff.

Leg'lation. Sec. 3771. Act 1897 p. 113 § 1 amending Act 1894 p. 35 § 2. The section before amendment read:

Sec. 2. That no final judgment shall be rendered by the justice of the peace in a cause wherein an attachment has been issued and a levy made thereunder, until the expiration of twenty days after such levy has been made; and any creditor of the defendant, upon making and filing an affidavit and undertaking as hereinbefore required of the plaintiff, together with a copy of his claim or demand against the defendant, shall be made a party plaintiff in such action, and may have like remedies against the defendant to secure his claim or demand as given to the original plaintiff.

CITATIONS.

The claimant of a fund garnished can not intervene after the trial of the main action and the rendition of judgment for plaintiff.—*Whalen v. McMahon*, 16 C. 374, 26 P. 583.

The failure of the justice to continue the hearing does not prejudice defendant's rights and he may not object.—*Paul v. Rooks*, 16 A. 46, 63 P. 712.

3772. Dismissal by one creditor not affect others.

SEC. 67. After any creditor has been made a party to the action, as hereinbefore provided, a dismissal by the first or any subsequent attaching creditor of his cause of action, or his proceedings in attachment, shall not operate as a dismissal of the attachment proceedings as to any other attaching creditor.

Legislation. Sec. 3772. Act of 1894 p. 35 § 3.

This act of 1894 purports to be an amendatory act and by its first section it amends by substitution G. S. § 2000, but all the further sections of the act are original legislation.

The session of 1894 was special and we find nothing in the call which would cover the attachment Act which it passed. Session Laws p. 26 § 20. If such be the case the text and the next three sections are void.

3773. Final judgment pro rated—Surplus.

SEC. 68. The final judgment in said action shall be a several judgment, wherein each creditor named as plaintiff shall have and recover of the defendant the amount of his claim or demand

as found to be due, together with his costs, and the money realized from the attachment and garnishee proceedings, after paying all costs taxed and included in said several judgments, shall, by an order of the court entered in his docket, be paid to the said several judgment creditors in proportion to the amount of their several claims as adjusted and included in such several judgments; and the surplus of any such moneys, if any, shall be paid to the defendant by order of the court entered in his docket, as aforesaid; *Provided*, When the property is attached while the defendant is removing the same, or after the same has been removed from the county, and the same is overtaken and returned, or while same is secreted by the defendant, or put out of his hands, for the purpose of defrauding his creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors.

Legislation. Sec. 3773. Act 1894 p. 35 § 4.

See note to § 3772.

3774. Writ first levied acquires jurisdiction—Transfer of causes.

SEC. 69. Whenever several attachment writs shall issue from different justices' courts against the same property of the defendant, the court whose writ is first levied upon the property of the defendant shall be deemed to have acquired jurisdiction of the property attached, and upon application all attachment proceedings pending against such defendant and property in any other justice's court, shall be transferred to the court having so acquired jurisdiction, where such actions shall be proceeded with in the same manner as though they were originally brought in the court to which they are so removed. And failure to transfer such causes within twenty days after the levy of the first attachment writ, as aforesaid, shall debar the party so failing of the right to pro rate with the party first attaching; *Provided, however*, That if it shall appear that an attachment against such property, in any suit against the same defendant shall have been issued in any court of record, then the justice shall certify such cause to

such court of record, where the same shall be proceeded with as though the same had been originally brought in said court of record; and whenever the claim of an intervenor subsequent attaching creditor shall exceed the jurisdiction of the justice's court exclusive of costs, it shall be the duty of such justice of the peace to forthwith certify all such attachment suits and transmit all papers issued or filed in the same, to the county court of such county, and thereafter the cases shall proceed in the same manner as if they had originally been begun in such county court. In all cases in which issues shall be joined upon the several attaching claims, separate trials shall be had thereon; but in default of an issue therein, each creditor shall make proof of his claim to the satisfaction of the justice before judgment shall be rendered therein.

Legislation. Sec. 3774. Act 1894 p. 36 § 5.

See note to § 3772.

CITATIONS.

Where attached property was sold after the first levy but prior to a second attachment, the subsequent attaching creditors can not invoke this statute as to consolidation of suits and distribution of property.—*Hendrie & Bolthoff Co. v. Collins*, 29 C. 108, 67 P. 166.

3775. Insolvent defendant—Debts not due—Creditors pro rate—Transfer of causes.

SEC. 70. Whenever it shall satisfactorily appear to the justice of the peace first acquiring jurisdiction that levies of writs of attachment have been made upon property of the defendant sufficient to render the defendant in such suits insolvent, the justice shall, upon application of any creditor whose claim is not yet due, order that writs of attachment may issue upon such undue claim or demand, in order that such attaching creditor may pro rate upon the attached property and the proceeds thereof, under the provisions of this act. In all such cases where judgment shall be rendered in such suits, there shall be a rebatement of interest if any. And in all cases where attaching creditors have commenced suits in different courts of justices of the peace, and

different property has been levied upon in such suits, and the property attached in such different suits shall consist of all of the debtor's property, or a sufficient amount thereof to render him insolvent, any attaching creditor may, upon affidavit of such insolvency, make application to said several justices of the peace at any time before judgment in the first attachment suit instituted to transfer all such cases to the justice of the peace first having acquired jurisdiction of any of defendant's property, and such justices shall immediately transmit all such cases to such court first having acquired jurisdiction, and the property attached in the said several justices' courts shall be turned over to the officer having in custody the property of defendant in such court having first acquired jurisdiction, and thereupon the said justice shall proceed with all such cases as though the same were originally commenced in his court, and the proceeds of all the property, after paying the costs of the several suits, shall be pro rated between all of the judgment creditors in proportion to the amount of their respective judgments.

Legislation. Sec. 3775. Act 1894 p. 37 § 6.
See note to § 3772.

3776. Undertaking by defendant to secure plaintiff.

SEC. 71. The writ of attachment shall be directed to the constable of the county in which the suit is commenced, and shall require such constable to serve a copy of the writ upon the defendant, and so attach and safely keep so much of the personal property of the defendant within his county, which is liable to be taken in execution, as may be sufficient to satisfy the plaintiff's demand (the amount of which shall be stated in the writ, in conformity with the affidavit for the attachment), unless the defendant deposit with the justice the sum of money mentioned in the writ, or give the plaintiff security, to be approved by the justice, by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been attached. If such undertaking be offered, it shall be the duty of the justice to accept the same, if sufficient.

Legislation. Sec. 3776. G. S. § 2005. Act 1879 p. 19 § 6, cited under § 3767.

CITATIONS.

A bond for indemnity given to a sheriff who served processes directed to a constable was illegal and void.—*Porter v. Stapp*, 6 C. 34.

To constitute a valid levy the officer must take personal property into his care and possession.—*Crisman v. Dorsey*, 12 C. 572, 21 P. 922.

3777. Property subject to attachment.

SEC. 72. The rights, shares and interest which the defendant may have in any corporation, joint stock company or partnership, together with the interests and profits thereon, as well as all debts due the defendant from any person, shall be subject to be taken by virtue of the writ of attachment, and if judgment be recovered may be sold to satisfy the judgment execution.

Legislation. Sec. 3777. G. S. § 2006. Act 1879 p. 20 § 7, cited under § 3767.

CITATIONS.

Certificates of stock which have been signed but not transferred on the books of the company remain subject to attachment. The statute applies to justice courts as well as to courts of record.—*Conway v. John*, 14 C. 33, 23 P. 170.

3778. Debts, credits, etc., how attached—Notice to garnishee.

SEC. 73. The constable to whom the writ is delivered shall execute the same without delay, and if the deposit be not made or the undertaking given, as hereinbefore provided, then as follows:

First—Personal property, capable of manual delivery, shall be attached by taking the same into the custody of the constable.

Second—Debts, credits and other things in action which are not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or with his agent, a copy of the writ of attachment, and a notice that the debts owing by him to the defendant, or the credits or other choses in action or personal prop-

erty in his possession or control belonging to the defendant, are attached in pursuance of said writ. Every corporation or other than municipal corporation, sheriff, constable or trustee, shall be liable to be garnished under the provisions of this section.

[For garnishment before justices see sections 3793-3817.]

[Municipal Corporations may be garnished, section 131, Code.]

Legislation. Sec. 3778. G. S. § 2007. Act 1879 p. 20 § 8, cited under § 3767.

CITATIONS.

This section cited in holding that a municipal corporation is liable to garnishment upon a judgment obtained in a district court.—*Denver v. Brown*, 11 C. 341, 18 P. 216. *Sauer v. Neradaville*, 14 C. 56, 23 P. 87.

The officer holding the writ must take personal property into his custody which means that he must take it into his care and possession.—*Crisman v. Dorsey*, 12 C. 573, 21 P. 922.

Service of process from a justice court can not be made beyond the county.—*Rice v. American Nat. Bank*, 3 A. 86, 31 P. 1025.

In garnishment proceedings the statute must be literally and specifically followed and a departure vitiates the proceeding and renders it void.—*Colo. F. & I. Co. v. Blair*, 6 A. 42, 39 P. 897.

Garnishment proceedings before justices are in many material respects essentially different from those under the code.—*Nylan v. Renhard*, 10 A. 50, 49 P. 267.

In a justice court a proceeding in garnishment in aid of an attachment does not become a separate action so as to change the amount of costs that may be charged.—*Id.*

This section cited in holding that where personal property was released under forthcoming bond a subsequent purchaser without notice of the attachment took the property free from lien of the attachment.—*Nichols v. Chittenden*, 14 A. 64, 59 P. 559.

3779. Notice to garnishee—Liability.

SEC. 74. Any person so served with notice, as provided in the preceding section, may deliver all moneys due the defendant, or personal property or choses in action belonging to the defendant in his possession or under his control, to the constable holding the attachment writ, whose receipt therefor shall be sufficient evidence of such delivery. If such delivery be not made, the person

so garnished shall be liable to the plaintiff for the amount of all debts, property or things in action for which he would otherwise be liable to the defendant until the attachment is dissolved or the judgment recovered in the action is fully satisfied.

Legislation. Sec. 3779. G. S. § 2008. Act 1879 p. 20 § 9, cited under § 3767.

CITATIONS.

This section limits the liability of a garnishee to debts, property or other things in action for which he would be liable to the defendant.—*Voorhies v. Denver Hardware Co.*, 4 A. 429, 36 P. 66.

This section cited in an action concerning justice's costs in garnishment proceedings.—*Nylan v. Renhard*, 10 A. 50, 49 P. 267.

3780. Examination of garnishee.

SEC. 75. Every person so garnished shall be required to appear before the justice who issued the attachment writ, at a time and place to be mentioned in the garnishee summons, and be examined on oath touching his indebtedness to the defendant or the personal property or things in action, which he had at the time of service of such notice, or which may have come into his possession of and belonging to the defendant in the attachment. Upon such examination the justice may order the property or things in action, which belong to the defendant, that are in the custody or control of the garnishee, to be surrendered to the constable holding the writ of attachment upon such terms as may be just. If such property be not capable of delivery then a memorandum of the same shall be delivered to the constable to be by him endorsed on the attachment writ.

Legislation. Sec. 3780. G. S. § 2009. Act 1879 p. 20 § 10, cited under § 3767.

CITATIONS.

This section cited in an action concerning justice's costs in garnishment proceedings.—*Nylan v. Renhard*, 10 A. 50, 49 P. 267.

3781. Constable's duty—Statement of garnishee.

SEC. 76. The constable shall make a full and complete in-

ventory of the property attached by him, and return the same to the justice who issued the attachment writ. To enable him to make such return as to things in action and debts due by the garnishee to the defendant, he shall at the time of serving the writ of attachment and notice, provided for in section nine (9) of this act, request the party owing the debt, or holding possession of the things in the action for the defendant in the attachment, to give him a written statement, under oath, of the amount of his indebtedness to the defendant in the attachment, and of the things in action belonging to him, which are in his possession or control; if such statement be refused, the constable shall return the fact of such refusal with the writ.

[Section 9 referred to is section 3779.]

Legislation. Sec. 3781. G. S. § 2010. Act 1879 p. 21 § 11, cited under § 3767.

CITATIONS.

This section cited in an action concerning justice's costs in garnishment proceedings.—*Nylan v. Renhard*. 10 A. 50, 49 P. 267.

3782. Trial of right to property—Notice—Damages.

SEC. 77. If any person other than the defendant in attachment claim to own or be entitled to the possession of the property attached, or any part of it, he may file his affidavit with the justice at any time before the trial of the action, setting forth his claim, and particularly specifying what property he claims. Upon such affidavit being filed, the justice shall designate a time and place for the trial of the right of property, not more than five days from the date of the filing of such affidavit. Notice in writing shall be given to the attaching creditor, and to the debtor if such notice can be given, of the claim to be tried. In all cases where, upon trial of the issue thus made, the right of property is found to be in the claimant, the damages suffered by the claimant by reason of the levy shall be assessed by the court or jury, and the claimant shall recover his costs of the attaching creditor. If the judgment be in favor of the attaching creditor, the latter shall recover his costs of the claimant.

[Jury in trials of right of property, see section 3761.]

Legislation. Sec. 3782. G. S. § 2011. Act 1879 p. 21 ¶ 12, cited under § 3767.

CITATIONS.

Appeal by one claiming property under this section lies to the county court — *Wike v. Campbell*, 5 C. 126.

The notice referred to in this section applies to cases of claimants of the property other than the defendant in the suit.— *Bassett v. Inman*, 7 C. 272, 3 P. 384.

Having found the property to be in claimant the court is authorized to receive evidence as to its value although no formal issue of value is raised by the pleadings.— *Schluter v. Jacobs*, 10 C. 451, 15 P. 813.

The damages, where the property has been sold under the attachment, are limited to the value of the property at the time of levy with interest.— *Brasher v. Holtz*, 12 C. 201, 20 P. 616. *Cornforth v. Maguire*, 12 C. 433, 21 P. 192.

Whatever right third parties may have to property attached must be asserted before the trial of the main action.— *Whalen v. McMahon*, 16 C. 374, 26 P. 583.

The proceeding under this section performs the same office as an action of replevin and is a cumulative remedy; intervenor can not give a forthcoming bond. Upon judgment of dismissal costs should be taxed against intervenor.— *Kinnear v. Flanders*, 17 C. 15, 28 P. 328.

This section cited in holding that in a trial of a civil case before a justice the jury may consist of any number the parties may agree upon.— *Corthell v. Mead*, 19 C. 388, 35 P. 741.

A judgment in a trial under this and sec. 3783 fixes the right of the parties and is reviewable in this court.— *Eckman v. Poor*, 38 C. 202, 87 P. 1088. *Winship v. May*, 7 A. 356, 43 P. 904.

3783. Trial of exemption.

SEC. 78. If the defendant, or any one for him, shall claim the property attached to be exempt from seizure by virtue of any law of this state, and the attaching creditor shall deny that such property is so exempt, the proceedings had in cases provided for in the preceding section shall be had to try the right of exemption.

Legislation. Sec. 3783. G. S. § 2012. Act 1879 p. 22 § 13, cited under § 3767.

CITATIONS.

This section cited in holding that traversing an attachment

CITATIONS CONTINUED.

did not waive the right to claim an exemption.—*Bassett v. Inman*, 7 C. 272, 3 P. 384.

This and sec. 3782 provide for the separate trial of the claim of exemption, and a judgment in such a trial is reviewable by the supreme court.—*Eckman v. Poor*, 38 C. 201, 87 P. 1088.

3784. Order of sale—Execution—How sale conducted.

SEC. 79. If judgment be recovered by the plaintiff for the debt, or any part thereof, the justice shall issue an order of sale to the constable, directing him to satisfy such judgment out of the proceeds of the property attached by him, so far as the same shall suffice. And in case the property attached be not sufficient to satisfy such judgment, then the justice shall issue an execution, as in other cases. All sales under attachment shall be conducted as is by law provided in cases of sales of personal property under execution.

Legislation. Sec. 3784. G. S. § 2013. Act 1879 p. 22 § 14, cited under § 3767.

CITATIONS.

This section cited in holding that where personal property was released under forthcoming bond a subsequent purchaser without notice of the attachment took the property free from lien of the attachment.—*Nichols v. Chittenden*, 14 A. 65, 59 P. 959.

3785. Re-delivery of property.

SEC. 80. Whenever the judgment shall have been satisfied in full, the constable shall re-deliver to the defendant, or his authorized agent, upon reasonable demand, all of the property attached remaining in his hands unsold, and the proceeds of any property which may have been sold that have not been applied to the payment of the judgment and costs of the case.

Legislation. Sec. 3785. G. S. § 2014. Act 1879 p. 22 § 15, cited under § 3767.

3786. Release of property by bond—Appraisement—Sureties justify.

SEC. 81. The defendant may, at any time before final judgment in the action, release all property which may have been seized by virtue of the attachment writ, by his executing an undertaking as hereinafter provided. Such undertaking shall be given by the defendant to the plaintiff, be signed by two responsible sureties, each a resident of the county in which the suit is pending, and shall be to the effect that in case the plaintiff recover judgment against the defendant in the action, and the attachment is not dissolved, the defendant will deliver to the constable all property which has been seized by him by virtue of the attachment writ, or on failure so to do, will pay to the plaintiff the full value of the property attached, not exceeding the amount of the judgment and costs recovered in the action. To ascertain the value of the property attached, the justice, on the application of the defendant, shall appoint three disinterested persons, who shall be sworn to appraise and fix the value of the property attached, and who shall make due return of the appraisement to the justice forthwith. Upon return of such appraisement, the sum to be fixed in the undertaking herein provided for shall be double the amount of such appraisement. The sureties on such undertaking shall be required by the justice to justify in double the amount of the appraised value of the attached property, as in other cases.

Legislation. Sec. 3786. G. S. § 2015. Act 1879 p. 22 § 16, cited under § 3767.

CITATIONS.

The lien of an attachment is not destroyed by delivering the property upon a forthcoming bond.—*Stevenson v. Palmer*, 14 C. 566, 24 P. 6.

This section cited in holding that a forthcoming bond under the code does not dissolve the attachment lien and that a subsequent purchaser takes the property subject to such lien.—*Chittenden v. Nichols*, 31 C. 204, 72 P. 54. (Contra *Nichols v. Chittenden*, 14 A. 59, 59 P. 957.)

Where one of the sureties on a redelivery bond had possession of the property and after judgment offered to redeliver it but the redelivery was declined, liability on the bond was discharged.—*Rider v. Thoms Crowe Mach. Co.*, 36 C. 367, 85 P. 697.

3787. Motion to dissolve attachment.

SEC. 82. The defendant may also at any time before the trial of the action on its merits, upon at least twenty-four hours' notice to the plaintiff, or his agent, move the justice to discharge the writ of attachment on the ground that the writ was improperly issued for any reasons appearing on the face of the papers in the action. And on the hearing of such motion, the justice shall have full power to permit all papers and process in the action to be amended with a view to substantial justice to the parties. No writ of attachment shall be dissolved in any case for any error or defect in the affidavit, undertaking or process, if, at the request of the plaintiff, such defective papers may be amended or new papers be substituted therefor, and the suit shall proceed as if such defective papers had been originally sufficient.

Legislation. Sec. 3787. G. S. § 2016. Act 1879 p. 23 § 17, cited under § 3767.

3788. Return of attachment writ.

SEC. 83. The constable shall return to the justice who issued it, the writ of attachment, with the summons, with a certificate of his proceedings, had by virtue of said writ, on or before the day set for the trial of the action.

Legislation. Sec. 3788. G. S. § 2017. Act 1879 p. 23 § 18, cited under § 3767.

3789. Attachment on Sunday—Holiday.

SEC. 84. If the plaintiff, or any credible person for him, shall make oath before the justice that it is necessary to execute the writ of attachment on Sunday or any legal holiday, in order to secure property sufficient to satisfy the judgment to be obtained, the justice shall endorse on the writ an order that the writ be executed on the Sunday or other legal holiday.

[For legal holidays see Chapter 62, Holidays.]

Legislation. Sec. 3789. G. S. § 2018. Act 1879 p. 23 § 19, cited under § 3767.

3790. Non-resident defendant—Notice—Trial.

SEC. 85. Whenever affidavit shall be made that the defendant resides without the state of Colorado, and cannot be found therein, so that service of process cannot be personally had on him, or that he conceals himself or stands in defiance of an officer, with intent to prevent service of process upon him, it shall be the duty of the justice of the peace to cause notice of the attachment to be published by posting three notices of the levy of such attachment, and of the day and hour at which the trial of the cause will be had at his office, in three of the most public places within his precinct. If at the time set for trial the defendant does not appear to defend the action, the justice shall proceed to hear the cause, and render judgment, as in cases where the summons has been personally served; *Provided*, That such notices shall be posted at least ten (10) days prior to the day set for trial; *And, provided, further*, That the constable shall in such cases retain the summons until the day set for trial, so that personal service of the summons may be had before the day set for trial, if practicable.

Legislation. Sec. 3790. G. S. § 2019. Act 1879 p. 24 § 20, cited under § 3767.

CITATIONS.

By filing an appeal bond in the appellate court a defendant waived objection to the jurisdiction of that court on the ground that the justice did not cause notice of suit to be published and that the constable did not return the summons until date of trial.—*Charles v. Amos*, 10 C. 273, 15 P. 417.

Facts upon which plaintiff was justified in making affidavit that defendant was concealing himself so as to avoid service of process.—*Brewer v. Mock*, 14 A. 458, 60 P. 578.

3791. If defendant flees, constable follow and seize.

SEC. 86. Whenever a defendant in attachment shall flee from the county with his property, to evade seizure of such property by virtue of the writ issued against him, it shall be lawful for the constable to whom such writ has been delivered, to follow and seize the property of such defendant wherever it may be found

within the state, and take it back to the county in which the suit has been originally instituted.

Legislation. Sec. 3791. G. S. § 2021. Act 1879 p. 25 § 22, cited under § 3767.

3792. Summons to garnishee—Trial—Judgment—Appeal.

SEC. 87. If any garnishee shall have failed to deliver to the constable any property of the defendant in attachment, when notified as provided in section ten (10) of this act, or to give a memorandum, as required by section eleven (11), upon judgment being rendered in favor of plaintiff, it shall be the duty of the justice to issue a summons in the name of the plaintiff against such garnishee, requiring such garnishee to appear before him at a day and hour therein named, to show cause why judgment should not be rendered in favor of the plaintiff and against the garnishee, as a garnishee of the defendant in the original action, for the amount of such judgment, or so much thereof as remains unsatisfied. If, upon trial of the garnishment, it appear that the garnishee is indebted to the judgment debtor in a debt payable in money, or have in his possession things in action, or property belonging to the judgment debtor, the justice shall render judgment against such garnishee for the amount of such money or the value of such things in action or property in the possession of such garnishee; *Provided*, Such judgment shall not exceed the judgment and costs rendered against such judgment debtor. And if the garnishee shall fail to appear on the return day of such summons, or fail to pay over such money as he may have in his hands, or to deliver to the constable such property as the garnishee may have in his possession belonging to the defendant, judgment shall be rendered against the said garnishee for the full amount of the judgment against the said defendant and the costs of suit. An appeal shall lie to the county court from any order made by the justice under this section.

[Section 10 referred to is section 3780.]

[Section 11 referred to is section 3781.]

Legislation. Sec. 3792. G. S. § 2020. Act 1879 p. 24 § 21, cited under § 3767.

CITATIONS.

Upon the issuance of summons the proceeding becomes a separate action and costs thereafter accruing are chargeable as in a separate action.—*Nyland v. Renhard*, 10 A. 51, 49 P. 267.

A garnishee summons served prior to judgment against the defendant, commanding the garnishee to appear before the justice will not take the place of the notice required by statute, nor give the justice jurisdiction of the garnishee.—*Henkle & Co. v. Bi-Metallic Bank*, 13 A. 411, 58 P. 336.

F. GARNISHMENT.

Section.

- 3793. Garnishee summoned—Form of summons.
- 3794. Execution need not be returned—Commencement against garnishee.
- 3795. Garnishee may answer to officer in writing.
- 3796. Answer of garnishee under oath—Interrogatories.
- 3797. Garnishee refusing to answer summons.
- 3798. Garnishee may pay officer—Receipt—Sale—Surplus.
- 3799. Plaintiff may traverse garnishee's answer—Scire facias issue—Trial—Judgment—Costs.
- 3800. Default of garnishee—Scire facias—Final judgment.
- 3801. Goods claimed by third person—Trial of right.
- 3802. Claimant may be made party—Default.
- 3803. Garnishee may claim set-off.
- 3804. Garnishee not liable on note or draft not due.
- 3805. Effect of judgment against garnishee.
- 3806. Discharge of garnishee no bar to action by defendant.
- 3807. Execution stayed until debt falls due.
- 3808. Garnishee shall deliver goods—Officer hold and sell.
- 3809. Plaintiff may pay lien and be subrogated.
- 3810. Subrogation—Where pledge held under condition.
- 3811. Disposition of property delivered to officer—Redemption money and indemnity.
- 3812. Garnishee refusing delivery may be attached—Judgment—Execution.
- 3813. Taxation of costs—Fees of garnishee.
- 3814. Trials with or without jury—Form of judgment.
- 3815. Appeals.
- 3816. Words plaintiff and defendant defined.
- 3817. Amendment of summons or affidavit.

3793. Garnishee summoned—Form of summons.

SEC. 88. Whenever a judgment shall be rendered by any court of record, or any justice of the peace, in this state, and execution against the defendant, or defendants, in said judgment has been issued and delivered to the proper officer, and the officer, after diligent search, shall not be able to find property of the defendant, or defendants, in his county, sufficient to satisfy the same, the officer shall, upon request of the plaintiff, his agent, or attorney, summon such person, or persons, as the plaintiff may direct, as garnishees, to appear before the court, or justice of the peace, from which the execution issued; if before a court of record, the summons shall be made returnable, and be served the same as other summonses in courts of record; if before a justice of the peace, the summons shall be made returnable within the same time, and served in the same manner as ordinary summons issued by justice of the peace. The summons may be in substance as follows, viz.:

A.....B.....

Plaintiff,

vs.

C.....D.....

Defendant.

The People of the State of Colorado:

To E.....F....., garnishee:

You are hereby notified that you are attached as garnishee in the above entitled cause, and you are required not to pay any debt due, or to become due, from yourself to the said C.....

D....., and that you must retain possession and control of all personal property, effects, and choses in action, of the said

C.....D....., in order that the same may be dealt with according to law. And you are hereby commanded to be and appear before (naming the court, or justice, as the case may be),

at, on the day of 18.....,
 at o'clock M., to answer what may be objected
 against you in that behalf.

(Signed by the officer.)

Dated,, 18.....

.....

Provided, Judgments against garnishees may be enforced in the same manner as other judgments of courts of law are, or hereafter may be enforced in this state.

[Municipal corporation subject to garnishment, Code, section 131, p. 98.]

Legislation. Sec. 3793. G. S. § 1551. Act 1885 p. 239 § 1 amending Act 1879 p. 76 § 1. See Code § 132 and notes.

CITATIONS.

Generally, and upon considerations of public policy a municipal corporation was not subject to garnishment.—*Las Animas County v. Bond*, 3 C. 411.

Under the act of 1879 a justice was authorized to issue garnishee process on a judgment rendered before the passage of the act.—*Fisher v. Hervey*, 6 C. 17.

This section cited in holding that a municipal corporation was liable to garnishment upon a judgment obtained in a district court.—*Denver v. Brown*, 11 C. 341, 18 P. 217.

Neither the provisions of the statute nor the code authorize an officer to take personal property from the possession of a mortgagee upon a writ of execution or attachment; the remedy is the process of garnishment.—*Metzler v. James*, 12 C. 334, 19 P. 890.

A garnishment proceeding in aid of an attachment constitutes a separate civil suit only when begun under the provisions of sec. 3792.—*Nyland v. Renhard*, 10 A. 51, 49 P. 268.

3794. Execution need not be returned—Commencement against garnishee.

SEC. 89. It shall not be necessary that the officer shall have first returned his execution to the court or justice before serving said summons. The return of such summons to the court or justice, as the case may be, showing due service on the person or persons therein named as garnishees, shall be the commencement

of proceedings against the said garnishees, and the court or justice shall examine and proceed against such garnishee or garnishees, served with summons, as hereinafter provided.

Legislation. Sec. 3794. G. S. § 1552. Act 1879 p. 77 § 2, entitled:

AN ACT

Concerning Garnishment in Courts of Record and Before Justices of the Peace, on Judgments Rendered; and in Relation to the Proceedings and Practice in Garnishment.

This act was repealed by Act 1887 p. 219 "so far as the same relates to courts of record."

3795. Garnishee may answer to officer in writing.

SEC. 90. Whenever any person shall be summoned as garnishee under any writ of attachment, or as provided in section one (1) of this act, the plaintiff, his agent or attorney, may direct the officer, at the time of serving the process or thereafter, to take the answer of the garnishee, or whenever any person summoned as garnishee as aforesaid shall desire to exonerate himself from further liability or attendance at court he may do so (except as otherwise provided in this act) by making and subscribing an answer.

[Section 1 referred to is section 3793.]

Legislation. Sec. 3795. Act 1879 p. 77 § 3. G. S. § 1553, cited under § 3794.

CITATIONS.

A justice has jurisdiction to try the issues raised by the answer.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

3796. Answer of garnishee under oath—Interrogatories.

SEC. 91. In all cases mentioned in the preceding section the answer of the garnishee shall be under oath, in writing, and the officer serving the writ of attachment or garnishee summons shall administer the oath, take the answer, and append the same to his return of the process served. The interrogatories and oath may be in substance as follows:

1. Are you in any manner indebted to the defendant, C
..... D....., either property or money, and is the same

now due? If not due, when is the same to become due? State fully all particulars.

Answer.

2. Have you in your possession, in your charge, or under your control, any property, effects, goods, chattels, rights, credits or choses in action of said defendant, or in which he is interested? If so, state what is the value of the same, and state fully all particulars.

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, effects, goods, chattels, rights, credits or choses in action, belonging to him, or in which he is interested, and now in the possession or under the control of others? If so, state the particulars.

Answer.

.....,
(Signature of garnishee.)

I, (insert the name of garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed are true, so help me God.

.....,
(Signature of garnishee.)

Subscribed and sworn to before me, this....., 18....

.....,
(Signature of officer.)

Legislation. Sec. 3796. G. S. § 1554. Act 1879 p. 77 § 4, cited under § 3794.

CITATIONS.

A justice has jurisdiction to try the issues raised by the answer.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

The right to garnish property does not apply as against purchasers without fraud, of the property of an insolvent partnership, who have paid the purchase money.—*Sickman v. Abernathy*, 14 C. 185, 23 P. 451.

3797. Garnishee refusing to answer summons.

SEC. 92. If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be summoned by the officer and required to appear before the court or justice as provided in section one (1) of this act, and to answer before the court or justice all the interrogatories prescribed in the preceding section and such other questions as the court or justice may think proper and right.

[Section 1 referred to is section 3793.]

Legislation. Sec. 3797. G. S. § 1555. Act 1879 p. 79 § 5, cited under § 3794.

3798. Garnishee may pay to officer—Receipt—Sale—Surplus.

SEC. 93. After answer the garnishee may pay to the officer the amount of money he so confesses to be due and owing by him to the defendant, and deliver to the officer the property and effects in his possession, charge, or under his control, and thereupon be relieved from attendance at court unless further summoned. In such case the officer shall receipt to the garnishee for the money and property received; and if the action be attachment he shall hold the same until the final determination of the suit, unless the same be of a perishable nature; if the proceeding be upon judgment, as provided in section one of this act, the officer shall sell the property, giving the usual previous notice, as in other cases, and apply the proceeds of sale and moneys so received from the garnishee, to the satisfaction of the execution in his hands against the defendant. Should there be any surplus money or property unsold in the hands of the officer after paying the cost of garnisheeing and satisfaction of the execution against the defendant, he shall pay and deliver the same to the defendant without delay.

Legislation. Sec. 3798. G. S. § 1556. Act 1879 p. 79 § 6, cited under § 3794.

3799. Plaintiff may traverse garnishee's answer—Scire facias issue—Trial—Judgment—Costs.

SEC. 94. After answer of the garnishee, in any case, is made, either before the officer in court, the plaintiff, his agent or at-

torney, may controvert the whole or any part of said answer, by filing in court, or before the justice, an affidavit traversing any of the facts set forth in such answer (such affidavit may be upon information and belief); thereupon a scire facias shall issue and be served upon such garnishee (unless he be already in court) requiring him to appear before the court or justice upon a day named therein. Issue so joined without further pleadings shall be tried as other trials at law are conducted; and if the finding of the court, or justice of the peace, or the verdict of the jury, shall be against the garnishee, judgment shall be given against him in the same manner as if the fact had been admitted by him, with the costs of such trial, and the moneys or property in the hands of garnishee or officer shall be by the court applied to the payment of the plaintiff's judgment against the defendant. If the finding or verdict shall be in favor of the garnishee, he shall recover his costs against the plaintiff. And in case the garnishee admits indebtedness to the defendant, he shall not be liable for costs.

Legislation. Sec. 3799. G. S. § 1557. Act 1879 p. 79 § 7, cited under § 3794.

CITATIONS.

A justice has jurisdiction to try the issues raised by a traverse of the answer.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

Where a garnishee answered and the justice without notice to the garnishee entered judgment against it, such garnishee was entitled to a trial de novo on certiorari from the county court.—*State Bank v. Harcourt*, 38 C. 247, 88 P. 856.

3800. Default of garnishee—Scire facias—Final judgment.

SEC. 95. If any garnishee, having refused to answer before the officer, or summoned to appear as provided by the preceding sections, being duly served with process, as provided by this act, shall fail to appear at the time and place in the process fixed for his appearance, default may be taken against such garnishee, and a conditional judgment may be rendered against such garnishee for the full amount of the judgment rendered against the debtor in the original action and costs. Thereupon a scire facias may issue out of the court where such proceeding is pending, com-

manding such garnishee to appear at said court on the return day of said writ, and to show cause why such judgment should not be made final and conclusive, which scire facias shall, if issued out of the district or county court, be returnable in twenty days, and shall be served upon such garnishee at least ten days before the return day, and if issued out of justice court, shall be returnable in five days from its issuance, and shall be served upon the garnishee at least three days before the return day, and if such garnishee shall fail to appear at such court or before such justice, on the return day of such scire facias, said conditional judgment shall be made final and conclusive.

Legislation. Sec. 3800. G. S. § 1558. Act 1879 p. 80 § 8, cited under § 3794. [REDACTED]

CITATIONS.

A valid conditional judgment is a condition precedent to the issuance of a scire facias against a garnishee. It is essential that there be service of process or its equivalent.—*Rice v. Am. Nat. Bank*, 3 A. 83, 31 P. 1025.

3801. Goods claimed by third person—Trial of right.

SEC. 96. If it appears that any goods, chattels, choses in action, credits or effects in the hands of a garnishee are claimed by any other person, by force of an assignment from the defendant, or otherwise, the court or justice of the peace shall permit such claimant to appear and maintain his right. The court or justice may, in its discretion, adjourn the case not exceeding five days for the purpose of giving the claimant such notice as it may direct.

[See Code, sections 136-139, as to claim of assignee in case of garnishment.

Legislation. Sec. 3801. G. S. § 1559. Act 1879 p. 80 § 9, cited under § 3794.

3802. Claimant may be made party—Default.

SEC. 97. If such claimant appears, he may be admitted as a party to the suit, as far as respects his title to the property in question, and may allege and prove any facts not stated nor denied by the garnishee, and such allegations shall be made, tried and

determined in the manner hereinbefore provided. If such person shall fail to appear, after having been served with notice in the manner directed, he shall nevertheless be concluded by the judgment in regard to his claim.

Legislation. Sec. 3802. G. S. § 1560. Act 1879 p. 80 § 10, cited under § 3794.

3803. Garnishee may claim set-off.

SEC. 98. Every garnishee shall be allowed to retain or deduct out of the property, effects or credits in his hands all demands against the plaintiff, and all demands against the defendant of which he could have availed himself if he had not been summoned as garnishee, whether the same are at the time due or not, and whether by way of set-off on a trial, or by the set-off of judgments or executions between himself and the plaintiff and defendant severally, and he shall be liable for the balance only after all mutual demands between himself and plaintiff and defendant are adjusted, not including unliquidated damages for wrongs and injuries; *Provided*, That the verdict or finding, as well as the record of the judgment, shall show in all cases against which party, and the amount thereof, any set-off shall be allowed, if any such shall be allowed.

Legislation. Sec. 3803. G. S. § 1561. Act 1879 p. 81 § 11, cited under § 3794.

CITATIONS.

Where a town was garnisheed for an officer's salary it could set off moneys collected by him for taxes and which he insisted upon retaining.—*Sauer v. Nevadaville*, 14 C. 57, 23 P. 87.

3804. Garnishee not liable on note or draft not due.

SEC. 99. No person shall be liable as a garnishee by reason of having drawn, accepted, made, or endorsed any negotiable instrument, when the same is not due, in the hands of the defendant at the time of service of the garnishee summons, or the rendition of the judgment.

Legislation. Sec. 3804. G. S. § 1562. Act 1879 p. 81 § 12, cited under § 3794.

CITATIONS.

Where an insolvent firm transferred all its property taking notes in payment, its creditors who had acquiesced in the sale could not question the bona fides of the sale.—*Sickman v. Abernathy*, 14 C. 177, 23 P. 448.

3805. Effect of judgment against garnishee.

SEC. 100. The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects and credits, paid, delivered or accounted for by the garnishee by force of such judgment.

Legislation. Sec. 3805. G. S. § 1563. Act 1879 p. 81 § 13, cited under § 3794.

CITATIONS.

This section cited in holding that a justice had jurisdiction to try the issues raised by an answer and traverse.—*Welsh v. Noyes*, 10 C. 144, 14 P. 322.

3806. Discharge of garnishee no bar to action by defendant.

SEC. 101. If the person summoned as garnishee is discharged the judgment shall be no bar to an action brought against him by the defendant for the same demand.

Legislation. Sec. 3806. G. S. § 1564. Act 1879 p. 81 § 14, cited under § 3794.

3807. Execution stayed till debt falls due.

SEC. 102. When judgment is rendered against any garnishee and it shall appear that the debt from him to the defendant is not yet due, execution shall not issue until the debt shall have become due.

Legislation. Sec. 3807. G. S. § 1565. Act 1879 p. 81 § 15, cited under § 3794.

3808. Garnishee shall deliver goods—Officer hold and sell.

SEC. 103. When any garnishee has any goods, chattels, choses in action, or effects other than money, belonging to the defendant, or which he is bound to deliver to him, he shall deliver the same

or so much thereof as may be necessary to the officer who shall hold the execution in favor of the plaintiff in the attachment suit or judgment, which shall be sold by the officer, and the proceeds applied and accounted for in the same manner as other goods and chattels taken on execution.

Legislation. Sec. 3808. G. S. § 1566. Act 1879 p. 82 § 16, cited under § 3794.

3809. Plaintiff may pay lien and be subrogated.

SEC. 104. When it shall appear that such goods, chattels, choses in action or effects in the hands of a garnishee are mortgaged or pledged, or in any way liable for the payment of a debt to him, the plaintiff may be allowed, under an order of the court or justice of the peace for that purpose, to pay or tender the amount due to the garnishee; and he shall thereupon deliver the goods, chattels, choses in action and effects in the manner before provided, to the officer who holds the execution.

Legislation. Sec. 3809. G. S. § 1567. Act 1879 p. 82 § 17, cited under § 3794.

CITATIONS.

Neither the statute nor the code authorize an officer to take personal property from the possession of a mortgagee upon a writ of execution or attachment. The remedy is the process of garnishment under this section.—*Metzler v. James*, 12 C. 327, 19 P. 887.

3810. Subrogation—Where pledge held under condition.

SEC. 105. If the goods, chattels, choses in action or effects are held for any purpose other than to secure the payment of moneys, and if the contract, condition or other thing to be done or performed is such as can be performed by the plaintiff without damage to the other parties, the court or justice of the peace may make an order for the performance thereof by him. Upon such performance or a tender, the garnishee shall deliver the goods, chattels and effects in the manner before provided to the officer who holds the execution.

Legislation. Sec. 3810. G. S. § 1568. Act 1879 p. 82 § 18, cited under § 3794.

3811. Disposition of property delivered to officer—Redemption money and indemnity.

SEC. 106. All goods, chattels, choses in action and effects received by the officer under either of the two preceding sections shall be sold and disposed of in the same manner as if they had been taken on an execution in any other manner, except that from the proceeds of the sale the officer shall repay the plaintiff the amount paid by him to the garnishee for the redemption of the same, with interest thereon, or shall indemnify the plaintiff for any other act or thing by him done or performed, pursuant to the order of the court or justice of the peace, for the redemption of the same.

Legislation. Sec. 3811. G. S. § 1569. Act 1879 p. 82 § 19, cited under § 3794.

3812. Garnishee refusing delivery, may be attached—Judgment—Execution.

SEC. 107. If any garnishee refuses or neglects to deliver any goods, chattels, choses in action or effects in his hands when thereto lawfully required by the court or justice of the peace or officer having an execution upon which the same may be received, he shall, if the proceeding be in a court of record, be liable to be attached and punished for contempt, or the court may enter up judgment for the amount of the plaintiff's judgment and costs, and award execution thereon against the garnishee, or, if the proceedings be before a justice of the peace, be liable to the plaintiff for the full amount of his judgment and costs against the defendant, and judgment may be entered against him therefor.

Legislation. Sec. 3812. G. S. § 1570. Act 1879 p. 83 § 20, cited under § 3794.

3813. Taxation of costs—Fees of garnishee.

SEC. 108. The court or justice of the peace may order the costs of the proceedings in any garnishment to be paid by the plaintiff, or out of the effects or credits garnished, or by the garnishee, or may apportion the same as shall appear to be just and equitable. The garnishee shall be entitled to fees, when he

does not resist or make costs when judgment is rendered against him, the same as witnesses before the same courts in civil cases.

Legislation. Sec. 3813. G. S. § 1571. Act 1879 p. 83 § 21, cited under § 3794.

3814. Trials with or without jury—Form of judgment.

SEC. 109. All trials under this act, except as otherwise provided, shall be conducted as other trials at law, with or without jury; if the trial be in a court of record, then according to the practice in courts of record; if before a justice of the peace, then the same shall be conducted according to the practice in justices' courts; *Provided*, Nothing contained in this act shall require either party to file written pleadings before a justice of the peace. If the finding of the court or justice, or verdict of the jury in any case shall be against the garnishee, judgment may be entered against the garnishee in favor of the defendant for the use and benefit of the plaintiff.

Legislation. Sec. 3814. G. S. § 1572. Act 1879 p. 83 § 22, cited under § 3794.

3815. Appeals.

SEC. 110. An appeal may be taken from any judgment or final order of the court or justice of the peace, by any party to any proceeding under this act, in like manner as appeals are taken in other cases.

[For appeals see sections 3845-3858.]

Legislation. Sec. 3815. G. S. § 1573. Act 1879 p. 83 § 23, cited under § 3794.

CITATIONS.

Under this section the superior court of Denver had jurisdiction in appeals from justices of the peace.—*Welsh v. Noyes*, 10 C. 145, 14 P. 322.

3816. Words plaintiff and defendant defined.

SEC. 111. The word "Plaintiff," as used in this act, shall be construed to mean the judgment or execution creditor; the word "Defendant," the judgment or execution debtor; and the word

"Officer," the sheriff, constable or other officer executing the process of the court or justice.

Legislation. Sec. 3816. G. S. § 1574. Act 1879 p. 83 § 24, cited under § 3794.

3817. Amendment of summons or affidavit.

SEC. 112. No proceedings against a garnishee or garnishees shall be quashed, or set aside, or said garnishee or garnishees discharged, on account of any insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended, in such time and manner as the court, or justice of the peace, shall respectively, in their discretion, direct; and in that event, the cause shall proceed, as if such proceedings had originally been sufficient.

Legislation. Sec. 3817. Act 1861 p. 274 § 40. R. S. p. 382 § 39. G. L. § 1440. Omitted in G. S.
Compare Code § 156.

G. REPLEVIN.

Section.

- 3818. Jurisdiction of justice.
- 3819. Affidavit for replevin.
- 3820. Undertaking—Terms of—Amount.
- 3821. Issuance of writ.
- 3822. Constable deliver copy to defendant.
- 3823. Delivery bond and return of property to defendant—To plaintiff.
- 3824. Officer liable for insufficient bond.
- 3825. Value not to be assessed higher than in affidavit.
- 3826. Assessing value against plaintiff.
- 3827. Findings for defendant—Judgment.
- 3828. Judgment for plaintiff—Terms—Costs.
- 3829. Property not taken on writ, damages awarded.
- 3830. Constable break building—Not seize goods from officer.
- 3831. Goods concealed—Justice commit defendant or other person.
- 3832. Trial by jury—Verdict.
- 3833. Property delivered, execution for damages.
- 3834. Property retained, writ for possession.
- 3835. Judgment where defendant's right has terminated.
- 3836. Right of appeal.

3818. Jurisdiction of justice.

SEC. 113. Justices of the peace shall have jurisdiction for the recovery of specific personal property not exceeding three hundred dollars in value as herein provided.

[See also section 3715.]

Legislation. Sec. 3818. G. S. § 2022. Act 1879 p. 148 § 1, entitled:

AN ACT

Giving Justices of the Peace Jurisdiction in the action of Replevin, and regulating the practice therein.

CITATIONS.

This section cited in holding that a writ of replevin is not a summons.—*Duffield v. D. & R. G. R. Co.*, 5 A, 29, 36 P. 623.

In order that a justice may have jurisdiction the value of the property must not exceed \$300 and the affidavit must show its real value.—*Miller v. Graf*, 14 A, 168, 59 P. 417.

A justice has no jurisdiction where the value exceeds \$300, and the judgment in such suit is a nullity.—*Robinson v. Bonjour*, 16 A. 458, 66 P. 451.

3819. Affidavit for replevin.

SEC. 114. The plaintiff, his agent or attorney, shall file an affidavit in the office of the justice, showing:

First—That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof.

Second—That the property is wrongfully detained by the defendant.

Third—The alleged cause of the detention thereof, according to his best knowledge, information and belief.

Fourth—That the same has not been taken for a tax assessment or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure.

Fifth—The real value of such property.

Legislation. Sec. 3819. G. S. § 2023. Act 1879 § 2, cited under § 3818. Sec. 86 of the Code calls for the same affidavit except the third cause.

CITATIONS.

A demand made after the beginning of the action but prior to the execution of the writ is sufficient. No proof of demand necessary where defendant claims ownership and right of possession.—*Denver Live Stock Co. v. Parks*, 41 C. 164, 91 P. 1110.

The affidavit must state that the property was not seized under an execution or attachment, or if so seized that it was exempt from such seizure.—*Noxon v. Glaze*, 11 A. 504, 53 P. 827.

It must appear upon the face of the affidavit that the justice has jurisdiction, and therefore the value of the property must be stated. A statement of aggregate value sufficient.—*Miller v. Graf*, 14 A. 168, 59 P. 417.

3820. Undertaking—Terms of—Amount.

SEC. 115. The plaintiff shall also file with such justice an undertaking in not less than double the amount of the property sought to be replevied, signed by one or more good and sufficient sureties, to the effect that the plaintiff shall duly prosecute the action and pay all the costs and damages which may be awarded against him, and if the property be delivered to him, that he will return the same to the defendant if a return thereof be adjudged.

Legislation. Sec. 3820. G. S. § 2024. Act 1879 § 3, cited under § 3818.

CITATIONS.

The several conditions required by the statute to be inserted in a replevin bond are to be treated as separate and independent.—*Imel v. Van Deren*, 8 C. 91, 5 P. 803.

3821. Issuance of writ.

SEC. 116. When said affidavit and undertaking are duly filed, the justice shall issue a writ directed to a constable commanding him to instantly seize and take into his custody, wherever they may be found in his county, the goods and chattels mentioned in the affidavit of the plaintiff; and to summon the defendant to appear at a specified time and place, not less than five days and not more than fifteen days from the date of said writ.

Legislation. Sec. 3821. G. S. § 2025. Act 1879 § 4, cited under § 3818.

CITATIONS.

The writ of replevin is not a summons within the meaning of the act relating to the return of the summons.—*Duffield v. D. & R. G. R. Co.*, 5 A. 25, 36 P. 623.

In replevin the jurisdiction of a justice is co-extensive with his county.—*Miller v. Graf*, 14 A. 168; 59 P. 417.

3822. Constable deliver copy to defendant.

SEC. 117. The constable shall execute the writ by taking into his possession the goods and chattels mentioned in the writ. He shall also deliver a copy of the writ to the defendant, or leave a copy at his usual place of residence, with some person over the age of twelve years, and shall make return upon said writ of the time and manner of service and any undertaking taken by him.

Legislation. Sec. 3822. G. S. § 2026. Act 1879 § 5, cited under § 3818.

**3823. Delivery bond and return of property to defendant—
To plaintiff.**

SEC. 118. If, within twenty-four hours after the service of the copy of the writ, there is executed on the part of the defendant, by two or more sufficient sureties, an undertaking to the plaintiff in not less than double the value of the property, as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff if such delivery be adjudged, and will pay all costs and damages that may be awarded against him in the action, the constable shall return the property to the defendant. If such undertaking be not given within twenty-four hours after the service of the writ, the constable shall deliver the property to the plaintiff.

Legislation. Sec. 3823. G. S. § 2027. Act 1879 § 6, cited under § 3818.

CITATIONS.

The neglect of the officer to give the defendant an opportunity to execute the bond is not a ground for dismissing the suit. In such case the proper practice is for the defendant to move that the property be restored upon his executing the bond.—*Robinson v. Austin*, 3 C. 375, *Wyatt v. Freeman*, 4 C. 14.

3824. Officer liable for insufficient bond.

SEC. 119. If the justice or constable in any case shall take an insufficient undertaking such justice or constable shall be liable on his official bond for all damages which may be sustained by either party by reason thereof.

Legislation. Sec. 3824. G. S. § 2028. Act 1879 § 7, cited under § 3818.

3825. Value not to be assessed higher than in affidavit.

SEC. 120. The value of the property shall not be assessed against the defendant at a greater amount than that sworn to by the plaintiff in his affidavit.

Legislation. Sec. 3825. G. S. § 2029. Act 1879 § 8., cited under § 3818.

3826. Assessing value against plaintiff.

SEC. 121. If the property has been delivered to the plaintiff and he fails to prosecute his action to final judgment, the justice shall, upon the demand of the defendant or his attorney, inquire into the value of the property and render judgment against the plaintiff and the sureties on his undertaking for the return of the property, or, in case a return of the property cannot be made, for the value of the same, the damages for the withholding thereof, and for costs of the suit.

Legislation. Sec. 3826. G. S. § 2030. Act 1879 § 9, cited under § 3818.

CITATIONS.

The measure of damages is interest on the value of the goods, but the interest is allowed as damages not as interest.—*Machette v. Wanless*, 2 C. 170. *Hanauer v. Bartels*, 2 C. 515. *Tucker v. Parks*, 7 C. 62, 1 P. 427. *Hennessey v. Barnett*, 12 A. 258, 55 P. 198.

3827. Findings for defendant—Judgment.

SEC. 122. In all cases where the property has been delivered to the plaintiff, when the justice shall find for the defendant, he shall also find:

First—Whether the defendant had the right of the property at the time of commencing the action.

Second—Whether the defendant had the right of possession of the property at the commencement of the action. And if he find the first fact in favor of the defendant, he shall also find the value of the property; or if he find the second fact in favor of the defendant, he shall find the value of the possession of the property; and he shall also find such damages for withholding the property, as may be just and proper. Such findings shall be entered by the justice upon his docket, and he shall render judgment in accordance therewith.

Legislation. Sec. 3827. G. S. § 2031. Act 1879 § 10, cited under § 3818.

CITATIONS.

The contention not conceded that this section and sec. 3828 apply to trials upon appeal to the county court.—*Hennessey v. Barnett*, 12 A. 258, 55 P. 198.

3828. Judgment for plaintiff—Terms—Costs.

SEC. 123. In all cases where the property has been delivered to the plaintiff, when the justice shall find for the plaintiff on the trial, he shall render judgment that the plaintiff retain the property, together with the damages for the illegal detention of the property by the defendant, and costs of suit.

[Costs in replevin, section 1066.]

Legislation. Sec. 3828. G. S. § 2032. Act 1879 § 11, cited under § 3818.

CITATIONS.

The contention not conceded that this section and sec. 3827 apply to trials upon appeal to the county court.—*Hennessey v. Barnett*, 12 A. 258, 55 P. 198.

3829. Property not taken on writ, damages awarded.

SEC. 124. When the property claimed has not been taken, the action may proceed as one for damages only and the plaintiff shall be entitled to such damages as may be right and proper.

Legislation. Sec. 3829. G. S. § 2033. Act 1879 § 12, cited under § 3818.

CITATIONS.

Damages allowed in a replevin suit for the detention of cattle where the property had not been delivered to the plaintiff.—*Witcher v. Watkins*, 11 C. 549, 19 C. 540.

The statute requires the return of the entire property or judgment for its full value if a delivery can not be had.—*Jones v. Messenger*, 40 C. 41, 90 P. 64. *Duffy v. Wilson*, 44 C. 344, 98 P. 827. *Horn v. Bank*, 8 A. 539, 46 P. 838.

The judgment, where the defendant has retained the goods, should award damages for their detention, designate the goods, find their value and should be in the alternative for the goods or the payment of their value.—*Lewin v. Stein*, 7 A. 67, 42 P. 185.

3830. Constable break building—Not seize goods from officer.

SEC. 125. The constable in executing the writ may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into such building or enclosure, and a delivery of the property after having demanded the same; *Provided*, That when the property described in the writ of replevin so directed to such constable shall be in the custody of a sheriff or other officer, under or by virtue of any process issued from a court of record in this state, then such constable shall not seize and take such property; but shall return the fact that such property is in the custody of a sheriff or other officer (naming him), under such process as the case may be, which return of such constable to his said writ of replevin shall be a sufficient return thereto.

Legislation. Sec. 3830. G. S. § 2034. Act 1879 § 13, cited under § 3818.

3831. Goods concealed—Justice commit defendant or other person.

SEC. 126. Whenever it shall be made to appear to the satisfaction of the justice by the affidavit of the plaintiff, or otherwise, that the defendant or any other person knowingly conceals the property sought to be recovered, or having control thereof, refuses to deliver the same to the officer, the justice may commit

such defendant or other person until he or they disclose where such property is, or deliver the same to the officer.

Legislation. Sec. 3831. G. S. § 2035. Act 1879 § 14, cited under § 3818.

3832. Trial by jury—Verdict.

SEC. 127. In all trials arising under this act the parties shall be entitled to a trial by jury upon the same conditions that jury trials are had in other cases before a justice of the peace. And, when the trial is by a jury, the justice shall require the jury to find and return in their verdict the same facts which he is required to find in section ten (10) of this act; and the justice shall record such findings in his docket, and render judgment in accordance therewith.

[Section 10 referred to is section 3827.]

Legislation. Sec. 3832. G. S. § 2036. Act 1879 § 15, cited under § 3818.

3833. Property delivered, execution for damages.

SEC. 128. In cases where the property has been delivered to the plaintiff, and when the justice gives judgment for the plaintiff for damages for withholding the property, he shall issue execution against the defendant for such damages and costs of suit.

Legislation. Sec. 3833. G. S. § 2037. Act 1879 § 16, cited under § 3818.

3834. Property retained, writ for possession.

SEC. 129. In cases where the property is retained by the defendant, and the justice gives judgment for the plaintiff, he shall issue an execution commanding the constable to take possession of the property and deliver the same to the plaintiff; or, if such delivery cannot be made, then to make the value of the property as found by the justice or jury from the defendant; and said execution shall also be for the damages for withholding the property and for costs of suit.

Legislation. Sec. 3834. G. S. § 2038. Act 1879 § 17, cited under § 3818.

3835. Judgment when defendant's right has terminated.

SEC. 130. In cases where the property has been delivered to the plaintiff, if the justice find that at the time of commencing the action the defendant had the right of the possession of the property, and such right of possession has since terminated, and that at the time of the trial the plaintiff has such right of possession, in that case the property shall remain with the plaintiff, and the judgment shall be for the value of the possession of the property as found by the justice, and for costs of suit, and execution shall issue therefor.

Legislation. Sec. 3835. G. S. § 2039. Act 1879 § 18, cited under § 3818.

3836. Right of appeal.

SEC. 131. In all cases under this act the parties shall be entitled to the right of appeal in the same manner and upon the same conditions as provided in other cases before a justice of the peace.

[For appeals see sections 3845-3858.]

Legislation. Sec. 3836. G. S. § 2040. Act 1879 § 19, cited under § 3818.

H. CERTIORARI.**Section.**

- 3837. Writ of certiorari—By whom granted.
- 3838. Limitation of certiorari six months.
- 3839. Bond for certiorari—Writ.
- 3840. Petition for certiorari—Cause.
- 3841. Stay of proceedings.
- 3842. Reversal—Damages—Costs.
- 3843. Justices and constables may have writ.
- 3844. Writ returnable to district or county court.

3837. Writ of certiorari—By whom granted.

SEC. 132. The judges of the district and county courts shall have power within their respective jurisdictions, and it shall be their duty, upon application made as hereinafter mentioned, to

grant writs of certiorari to remove causes from before justices of the peace into the district court, who shall endorse an order for the same upon the petition of the party praying such writ; and on producing the same to the clerk of the district court, he shall issue said writ in conformity to the provisions of this chapter.

Legislation. Sec. 3837. Act 1861 p. 232 § 51. R. S. p. 408 § 51. G. L. § 1532. G. S. § 1992. This section is not repealed by the Code. See notes to § 3840.

CITATIONS.

There are two different proceedings by certiorari; one to review the action of the inferior tribunal, the other to secure a trial de novo of causes previously heard by a justice.—*Small v. Bischelberger*, 7 C. 565, 4 P. 1195.

Where one was sued by a false name and submitted to a default, held that if the justice exceeded his authority in amending the judgment and the matter could not have been taken to a higher court under this or sec. 3846, the party nevertheless had a clear remedy under code sec. 330.—*Van Buren v. Posteraro*, 45 C. 593, 102 P. 1069.

Certiorari does not lie to the county court in a cause appealed from a justice of the peace.—*U. P. Ry. Co. v. Bowler*, 4 A. 29, 34 P. 940.

3838. Limitation of certiorari six months.

Sec. 133. No writ of certiorari shall issue after the expiration of six months from the time of the rendition of judgment.

Legislation. Sec. 3838. Act 1861 p. 232 § 52. R. S. p. 408 § 52. G. L. § 1533. G. S. § 1993.

3839. Bond for certiorari—Writ.

Sec. 134. Before any writ of certiorari shall issue the party applying therefor shall give bond, with security, in the same manner, and with the same conditions, and where the same shall be defective may be perfected, as bonds in cases of appeals from justices of the peace. The writ of certiorari shall require the justice to certify to the district court a transcript of the judgment and other proceedings had before him, and in no case shall the justice be required to send up a minute or memorandum of

the evidence given before him; but upon the return of said writ such proceedings shall be had thereon as in cases of appeals.

Legislation. Sec. 3839. Act 1861 p. 232 § 53. R. S. p. 408 § 53. G. L. § 1534. G. S. § 1994.

CITATIONS.

The writ can not issue without the bond. The office of the writ is to afford a trial de novo; new parties are not to be brought in. No judgment can be given except upon the issues raised before the justice.—*Axelson v. Peo.*, 45 C. 287, 101 P. 55.

3840. Petition for certiorari—Cause.

SEC. 135. The petition, on application for writs of certiorari, shall set forth and show upon the oath of the applicant that the judgment before the justice of the peace was not the result of negligence of the party praying for such writ, that the judgment, in his opinion, is erroneous and unjust, setting forth wherein the error and injustice consists, and that it was not in the power of the party to take an appeal in the ordinary way; setting forth the particular circumstances which prevented him from so doing.

Legislation. Sec. 3840. Act 1861 p. 233 § 54. R. S. p. 408 § 54. G. L. § 1535. G. S. § 1995.

The general requirements of Code §§ 331 and 332 do not seem to abrogate this section. For certiorari in probate matters, see § 7254.

CITATIONS.

Certiorari will not be allowed a party who by his own negligence fails to avail himself of the proper remedy in apt time.—*Tilton v. Larimer County Agr. Ass.*, 6 C. 288.

Upon motion to quash the writ the averments thereof are admitted as in case of demurrer. No issue can be tried as to the averments in the petition which gives the court jurisdiction.—*Small v. Bischoelberger*, 7 C. 565, 4 P. 1196.

Failure to appear in an action of replevin and relying upon the assurance of the constable that he would have the suit dismissed will not entitle one to certiorari under this section.—*Austin v. Bush*, 11 C. 200, 17 P. 502.

Sufficiency of petition under this section, by garnishee against whom judgment had been entered by a justice.—*State Bank v. Harcourt*, 38 C. 247, 88 P. 856.

The title of the cause in the district court must be the

CITATIONS CONTINUED.

same as that in the justice's court. The non-appearing party must have notice.—*Axelson v. Peo.*, 45 C. 286, 101 P. 55.

The code provisions have no application to proceedings before a justice. A petition lacking statements as to negligence and power to appeal can not be sustained.—*Wood v. Lake*, 3 A. 286, 33 P. 81.

Facts stated in petition held sufficient to excuse negligence in failing to appeal.—*Ballinger v. Lepore*, 10 A. 169, 50 P. 314.

3841. Certiorari—Stay of proceedings.

SEC. 136. The justice of the peace, constables, and other persons concerned, shall, as soon as the writ of certiorari shall be served, stay all further proceedings in that case, until the further order of the district court.

Legislation. Sec. 3841. Act 1861 p. 233 § 55. R. S. p. 409 § 55. G. L. § 1536. G. S. § 1996.

3842. Reversal—Damages—Costs.

SEC. 137. If the judgment of the justice shall be reversed by the district court, in whole or in part, such reversal shall not vitiate any sale on execution which shall have been effected before the issuing of the writ of certiorari, but in such cases the district court shall have power to assess the damages which shall have accrued in consequence of such sale, and cause judgment to be entered, or a deduction made, therefor; and in all cases of a partial reversal of judgment either in cases of appeals or certiorari, the court shall have power to apportion the costs between the parties, according to justice.

[Costs in certiorari, section 1071.]

Legislation. Sec. 3842. Act 1861 p. 233 § 56. R. S. p. 409 § 56. G. L. § 1537. G. S. § 1997.

3843. Justices and constables may have writ.

SEC. 138. Justices and constables, and their securities, may have the benefit of appeal, certiorari, and writ of error, from all decisions and judgments rendered in suits against them, as is provided in other cases.

Legislation. Sec. 3843. Act 1861 p. 241 § 94. R. S. p. 417 § 94. G. L. § 1573. G. S. § 1998.

3844. Certiorari returnable to district and county court.

SEC. 139. Judgments rendered in actions before justices of the peace may be removed by writs of certiorari to either the county or district courts of the same county in such cases as writs of certiorari now are or may hereafter be allowed by law.

Legislation. Sec 3844. Act 1877 G. L. § 1601. G. S. § 1999.

I. APPEAL.

Section.

- 3845. Appeals to county court.
- 3846. Appeals—Cost bond—Writ of procedendo.
- 3847. Form of appeal bond.
- 3848. Bond filed with justice—Justice file transcript of judgment.
- 3849. Bond filed with clerk—Supersedeas—Summons.
- 3850. Stay of proceedings—Justice return transcript.
- 3851. One or more parties may appeal.
- 3852. One party appealing, summons to others.
- 3853. Filing amended bond in county court.
- 3854. On appeal no exception to summons—Summary trial.
- 3855. Want of jurisdiction—Dismissal of suit.
- 3856. Parties in appellate court—Rights.
- 3857. Liability of sureties.
- 3858. Execution from county court.

3845. Appeals to county court.

SEC. 140. All appeals from judgments of justices of the peace, both in civil and criminal actions, shall be taken to the county court of the same county, and no appeal shall lie from a judgment of a justice of the peace in any cause, civil or criminal, to the district court.

[Appeals in criminal cases, section 3869.]

Legislation. Sec. 3845. Act 1877 G. L. § 1599. G. S. § 1978.

CITATIONS.

An appeal will not lie in any case to the district court. A dismissal of such appeal must be without costs.—*Denver v.*

CITATIONS CONTINUED.

Mortragon, 4 C. 256. *Wike v. Campbell*, 5 C. 128, *Reynolds v. Larkins*, 10 C. 127, 14 P. 115.

An appeal does not lie to this court from the county court, quashing certiorari to a justice court judgment taxing costs against a prosecuting witness.—*Loloff v. Heath*, 31 C. 171, 71 P. 1112.

While the district and justice courts have concurrent jurisdiction under sec. 3578, the district court can not acquire jurisdiction of a cause pending in the county court on appeal from a justice court.—*Morse v. Peo.*, 43 C. 120, 95 P. 286.

Secs. 3845 to 3857 were taken from Illinois and this court has followed the construction by that state as to the filing of the transcript.—*Hall v. Jones*, 45 C. 230, 100 P. 419.

3846. Appeals—Cost bond—Writ of procedendo.

SEC. 141. Appeals from judgments of justices of the peace, to the county court, shall be granted in all cases except on judgment confessed; *Provided*, The party praying the appeal shall, within ten days from the rendition of the judgment from which he desires to take an appeal, enter into bond, with security to be approved and conditioned as hereinafter provided, and pay the cost of granting the appeal only; * *And, provided, further*, That the party appealing, shall, within twenty days from the date of the approval of his appeal bond, pay to the clerk of the court to which he takes an appeal, all fees necessary to have the cause docketed and placed on the calendar of said court. In case said party appealing fails to pay said fees within said time, then the said cause shall be dismissed on application of the appellee, and the clerk of said court shall at once issue a writ of procedendo to the justice of the peace from whose judgment the appeal was taken, to make the amount of the judgment, and all costs therein incurred before said justice of the peace, and in said court. Actions pending at time of taking effect of this act, shall not be deemed as affected thereby.

[Costs in appeal, section 1071.]

Legislation. Sec. 3846. Act 1887 p. 325 § 1 amending G. S. § 1979. G. L. § 1519. R. S. p. 404 § 38. Act 1861 p. 230 § 38. The 1861 act was amended by act 1862 p. 77 § 9 and the R. S. section by Act 1876 p. 81 as to Arapahoe County. The last amendment of 1887 adds the second proviso.

CITATIONS.

The provisions of the R. S. 1868 as to appeals remain in force, but under the act of 1877 appeals lie to the county court instead of district court.—*Wike v. Campbell*, 5 C. 128.

The failure to pay to the justice the costs within the time limited is no ground for dismissing the appeal.—*Carbonate v. Ives*, 10 C. 82, 14 P. 120. *Schofield v. Felt*, 10 C. 148, 14 P. 129. *D. & R. G. Ry. Co. v. Rader*, 11 C 536, 19 P. 476.

Under this and sec. 3854 the county court should re-try the issues in attachment as well as on the merits.—*Hurtgen v. Kuntrowitz*, 15 C. 444, 24 P. 872.

This section confers a right to have an appeal dismissed upon failure to comply with its requirements in relation to fees; the right may be waived by unqualified appearance.—*Busby v. Camp*, 16 C. 39, 26 P. 326. *Hall v. Denver O. & C. Co.*, 13 A. 418, 58 P. 402.

The surety is liable on an appeal bond upon dismissal of the appeal for failure to pay the docket fee.—*Lux v. McLeod*, 19 C. 465, 36 P. 247.

The county judge may, when disqualified in causes pending on appeal from a justice, change the venue to another county or to the district court. He may invite another county judge to try the cause.—*Del Norte v. Weiss*, 38 C. 272, 88 P. 581.

The provisions of this section requiring a bond within ten days is mandatory and jurisdictional.—*Horn v. Martin*, 38 C. 365, 87 P. 1073.

Either party may appeal and in case of the successful party appealing the form of the bond in sec. 3847 should be changed to meet the facts.—*Zahnen v. Stenaer*, 39 C. 458, 89 P. 793.

This section cited in holding that injunction will not stay execution of judgment rendered by a justice where the only ground of complaint was the misnomer of the defendant.—*Van Buren v. Posteraro*, 45 C. 593, 102 P. 1069.

Cited in holding that one may not with one bond proceed partly under sec. 3848 and partly under sec. 3849.—*Predovitch v. Predovitch* (March 1911), 114 P. 304.

The provision relating to the time within which an appeal may be taken is mandatory and jurisdictional.—*Adams v. Decker* (April 1911), 114 P. 655.

3847. Form of appeal bond.

SEC. 142. The bond required to be given shall be in substance as follows:

Know all men by these presents, That we, A. B. and C. D., are held and firmly bound unto E. F., in the penal sum of (here insert double the amount of the judgment and costs), dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this.....day of....., 18....

The condition of the above obligation is such that, whereas, the said E. F. did, on the.....day of....., A. D. 18...., before....., a justice of the peace in and for the county of....., recover a judgment against the above bounden A. B., for the sum of.....dollars; from which judgment the said A. B. hath taken an appeal to the county court of the county of.....aforesaid, and state of Colorado.

Now, if the said A. B. shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

.....(L. S.)

.....(L. S.)

Approved by me, at my office, this.....day of....., 18....

....., J. P. (L. S.)

Legislation. Sec. 3847. Act 1861 p. 230 § 39. R. S. p. 405 § 39. G. L. § 1520. G. S. § 1980.

CITATIONS.

When the appeal bond has been filed the failure to pay to the justice the costs is no ground for dismissing the appeal.—*Schofield v. Felt*, 10 C. 148, 14 P. 129.

CITATIONS CONTINUED.

The statutory provisions enter into and become a part of the condition of the bond. A surety is liable upon dismissal of the appeal.—*Lux v. McLeod*, 19 C. 468, 36 P. 248.

Either party may appeal and in case of appeal by the successful party the form of the bond should be changed to meet the facts.—*Zahnen v. Stender*, 39 C. 458, 89 P. 794.

It is not essential that the bond should be drawn in the specific form expressed in the statute.—*Case v. Daniels*, 1 A. 116, 27 P. 886.

3848. Bond filed with justice—Justice file transcript of judgment.

SEC. 143. The party desiring such appeal may file his bond in the office of the justice who shall have rendered the judgment, such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case, and if execution shall have been issued, he shall recall the same, and shall, within twenty days after receiving and approving the appeal bond, file the same in the office of the clerk of the county court, together with all the papers and transcript of the judgment he has given, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

Legislation. Sec. 3848. Act 1861 p. 230 § 40. R. S. p. 406 § 40. G. L. § 1521. G. S. § 1981.

CITATIONS.

If the justice chooses to give credit for the costs in preparing the transcript he may do so.—*Carbonate v. Ives*, 10 C. 82, 14 P. 120.

A justice may refuse to act until his costs are paid.—*Schofield v. Felt*, 10 C. 148, 14 P. 129.

This section provides for civil cases and sec. 3869 provides for criminal cases.—*Knight v. Peo.*, 11 C. 310, 17 P. 903.

The mere fact that the justice delivered his transcript to the attorney for appellant instead of filing with the county court does not have the affect of vitiating the appeal.—*Del Norte v. Weiss*, 38 C. 273, 88 P. 582.

Under sec. 6668 a municipality is not required to give an appeal bond.—*Id.*

CITATIONS CONTINUED.

The failure of the justice to file the transcript is waived where the parties appear and impanel a jury. Jurisdiction attaches upon filing the transcript even after the time prescribed.—*Hall v. Jones*, 45 C. 230, 100 P. 419.

One may not with one bond proceed partly under this section and partly under sec. 3849.—*Predovich v. Predovich* (March 1911), 114 P. 304.

The provision relating to the time within which an appeal may be taken is mandatory and jurisdictional.—*Adams v. Decker*, (April 1911), 114 P. 655.

3849. Bond filed with clerk—Supersedeas—Summons.

SEC. 144. Or the appealing party may file his bond in the office of the clerk of the county court of the proper county within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approving of which bond, the clerk shall issue a supersedeas enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto; and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, which summons shall be served and returned as in other cases.

Legislation. Sec. 3849. Act 1861 p. 231 § 41. R. S. p. 406 § 41. G. L. § 1522. G. S. § 1982.

CITATIONS.

This section provides for appeal in civil cases and sec. 3869 provides for appeal in criminal cases.—*Knight v. Peo.*, 11 C. 310, 17 P. 903.

It is not necessary that costs be paid to the justice personally when the appeal bond is filed in the county court as allowed by this and sec. 3850.—*D. & R. G. Ry. Co. v. Rader*, 11 C. 538, 19 P. 477.

One may not with one bond proceed partly under this section and partly under sec. 3848.—*Predovich v. Predovich* (March 1911), 114 P. 304.

An appeal bond approved by the judge when there was a regularly appointed clerk was of no effect.—*Adams v. Decker* (April 1911), 114 P. 655.

3850. Stay of proceedings—Justice return transcript, etc.

SEC. 145. So soon as the clerk shall issue a supersedeas, as aforesaid, the justice who gave the judgment and any constable in whose hands an execution or other process may be in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers, and a transcript of the judgment he had given, to the clerk of the said court, with a certificate under his hand that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

Legislation. Sec. 3850. Act 1861 p. 231 § 42. R. S. p. 406 § 42. G. L. § 1523. G. S. § 1983.

CITATIONS.

When the bond is filed with the clerk of the county court the appeal is not perfected until the service of the summons and supersedeas provided for by statute.—*D. & R. G. Ry. Co. v. Rader*, 11 C. 538, 19 P. 477.

3851. One or more parties may appeal.

SEC. 146. One or more plaintiffs or defendants, in causes decided by the justices of the peace, shall be allowed the right of appeal to the county court without the consent of the others; and when one of several appeals, the supersedeas shall issue directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

Legislation. Sec. 3851. Act 1861 p. 231 § 43. R. S. p. 406 § 43. G. L. § 1524. G. S. § 1984.

CITATIONS.

An appeal may be taken by two of three joint makers of a promissory note.—*Miller v. Kinzel*, 20 A. 349, 78 P. 1076.

3852. One party appealing, summons to others.

SEC. 147. When an appeal bond shall be executed by one of several parties, from the judgment of a justice of the peace, the clerk of the county court shall issue a summons against the other parties, notifying them of the appeal in the said county court,

and requiring them to appear, and abide and perform the judgment of the court in the premises, which summons shall be served as other process issued in appeal cases: and in case such summons shall be returned that parties are not found, the cause shall at the first term of the court be continued, but at the second term shall be tried. The court shall have power to give the same judgment in the appeals taken under the preceding sections, as though all the parties to the judgment had joined in the appeal.

Legislation. Sec. 3852. Act 1861 p. 231 § 44. R. S. p. 406 § 44. G. L. § 1525. G. S. § 1985.

CITATIONS.

Under the laws of 1872 process was not required to be issued to bring into the district court parties not joining in an appeal from the probate court.—*McClure v. Sanford*, 3 C. 514.

Where only one party appeals and the others are not brought in by summons and fail to appear, judgment may go against the one appealing. The statute is for the protection of the non-appealing parties.—*Keefer v. Amicone*, 45 C. 114, 100 P. 596.

Unless the parties not appealing are served with summons or appear, judgment can not be rendered against them at the first term, but the cause must be continued.—*Miller v. Kinzel*, 20 A. 349, 78 P. 1076.

3853. Filing amended bond in county court.

Sec. 148. If, upon the trial of any appeal, the bond required to be given shall be adjudged informal or otherwise insufficient, the party who shall have executed such bond shall in nowise be prejudiced by reason of such informality or insufficiency: *Provided*, He will, in a reasonable time, to be fixed by the court, execute a good and sufficient bond.

Legislation. Sec. 3853. Act 1861 p. 231 § 45. R. S. p. 407 § 45. G. L. § 1526. G. S. § 1986.

CITATIONS.

Time should be allowed in which to file an amended bond.—*Gardner v. Dunn*, 1 C. 2. *School District v. Erskin*, 1 C. 367. *McKee v. Bassick M. Co.*, 8 C. 394, 8 P. 562.

Whether appellant shall have further time to file a third bond rests in the discretion of the court.—*Boulder County v. King*, 9 C. 544, 13 P. 540.

CITATIONS CONTINUED.

Attorney in fact should produce authority to execute bond. If appellant does not ask leave to file amended bond, appeal should not be dismissed but court should enter a rule to be made absolute on failure to file new bond within reasonable time.—*Schofield v. Felt*, 10 C. 148, 14 P. 129.

3854. On appeal, no exceptions to summons—Summary trial.

SEC. 149. Upon the trial of all appeals before the county court, no exception shall be taken to the form of service of the summons issued by the justice of the peace, nor to any of the proceedings before him; but the court shall hear and determine the cause in a summary way, according to the justice of the case, without pleading in writing.

Legislation. Sec. 3854. Act 1861 p. 232 § 46. R. S. p. 407 § 46. G. L. § 1527. G. S. § 1987.

CITATIONS.

Upon appeal from the justice the trial shall be de novo, and the court has no power to review the proceedings of the justice.—*Lee v. Ralston*, 1 C. 6.

This section of R. S. 1868 held applicable to cases arising under the ordinances of the city of Central.—*Deitz v. Central City*, 1 C. 323, 330.

On appeal defendant may raise objection as to residence and where the cause of action accrued.—*Melvin v. Latsnaw*, 2 C. 84.

By entering his appearance in the appellate court the defendant waived all defects in the process and service.—*Wyatt v. Freeman*, 4 C. 15. *Charles v. Amos*, 10 C. 277, 15 P. 417. *School Dist. v. Waters*, 20 A. 107, 17 P. 255.

While cases appealed from a justice are pending for trial de novo they are not governed by the code as to written pleadings.—*Thorne v. Ormner*, 8 C. 354, 8 P. 569. *Joss v. Hallett*, 39 C. 396, 89 P. 810.

On appeal a defendant may file his affidavit denying the genuineness of notes sued on which defence he did not make before the justice.—*Assig v. Pearsons*, 9 C. 538, 13 P. 720.

On appeal in attachment the county court should re-try the issues in attachment as well as on the merits.—*Hurtgen v. Kantrowitz*, 15 C. 444, 24 P. 872.

The acts governing appeals from justice to county and from

CITATIONS CONTINUED.

county to district courts are quite dissimilar as to waiving defects by filing bond.—*White House M. Co. v. Powell*, 30 C. 400, 70 P. 680.

A written pleading in the county court on appeal should on motion be rejected.—*Utah Nursery Co. v. Marsh*, 46 C. 212, 103 P. 302.

On appealing from a justice's judgment and proceeding to trial on the merits, the over-ruling by the county court of his motion to dismiss waives all irregularities in the justice's court.—*Downing v. Tipton*, 48 C. 364, 110 P. 72.

An appeal from a judgment of a police magistrate cured any defects in the summons.—*Saner v. Peo.*, 17 A. 310, 69 P. 76.

As originally enacted in 1861 this section read "form or service" instead of "form of service" of the summons.—*School District v. Waters*, 20 A. 107, 77 P. 255.

3855. Want of jurisdiction—Dismissal of suit.

SEC. 150. If it shall appear, however, that the justice had no jurisdiction of the subject matter of the suit, the same shall be dismissed at the cost of the plaintiff.

Legislation. Sec. 3855. Act 1861 p. 232 § 47. R. S. p. 407 § 47. G. L. § 1528. G. S. § 1988.

CITATIONS.

A defendant may plead in bar before the justice and on appeal that he is a non-resident of the county under sec. 3719.—*Melvin v. Latshaw*, 2 C. 84.

Where on appeal a verdict was rendered in the county court for \$365, and plaintiff did not remit, the court should have dismissed the action.—*Thornily v. Pierce*, 10 C. 253, 15 P. 337.

Sec. 3719 concerning residence does not refer to the subject matter of actions and is not covered by this section.—*Hardenbrook v. Harrison*, 11 C. 11, 17 P. 73.

If a justice has no jurisdiction over the subject matter the county court acquires none by an appeal, unless the appellee waives the objection.—*Behymer v. Nordloh*, 12 C. 352, 21 P. 37. *Robinson v. Compher*, 13 A. 344, 57 P. 754.

Where a judgment of dismissal is entered in intervention proceedings, on appeal the costs should be taxed against the intervenor.—*Kinnear v. Flanders*, 17 C. 15, 28 P. 328.

3856. Parties in appellate court—Rights.

SEC. 151. The plaintiff in the justice's court shall be the plaintiff in the county court on the trial of the appeal; and the rights of the parties shall be the same as in the original actions.

Legislation. Sec. 3856. Act 1861 p. 232 § 48. R. S. p. 408 § 48. G. L. § 1529. G. S. § 1989.

CITATIONS.

Causes brought up on appeal from justices' courts shall be tried de novo.—*Lee v. Ralston*, 1 C. 6.

Held error to refuse defendant leave to file an affidavit on appeal, denying the genuineness of signatures to notes.—*Assig v. Pearsons*, 9 C. 588, 13 P. 720.

The trial on appeal is de novo and the court should re-try the issues in attachment as well as on the merits.—*Hurtgen v. Kantrowitz*, 15 C. 444, 24 P. 872.

This section cited in refusing to review a cause transferred from the court of appeals which involved liability upon an appeal bond.—*Altman v. Human*, 30 C. 278, 70 P. 421.

Although on appeal the trial is de novo the defendant is limited to such counter-claim as might be valid before the justice.—*Ramer v. Smith*, 4 A. 437, 36 P. 303.

3857. Liabilities of sureties.

SEC. 152. The security in any appeal bond shall be liable thereon for the amount of the original judgment and all costs thereon, in case the said appeal be dismissed; and shall be liable also on said bond for whatever judgment may be rendered by the county court in case the original judgment be affirmed by the said county court, either in whole or in part.

Legislation. Sec. 3857. Act 1861 p. 232 § 49. R. S. p. 408 § 49. G. L. § 1530. G. S. § 1990.

CITATIONS.

A surety on a bond given on appeal from a justice court to the county court is liable for the amount of the original judgment and costs in case of a dismissal of the appeal.—*Lux v. McLeod*, 19 C. 468, 36 P. 248.

3858. Execution from county court

SEC. 153. Execution may issue out of the county court on all judgments rendered in cases appealed, as in other cases originating in the county court.

Legislation. Sec. 3858. Act of 1861 p. 232 § 50. R. S. p. 408 § 50. G. L. § 1531. G. S. § 1991.

J. CHANGE OF VENUE.**Section.**

3859. Change of venue—Defendants.

3860. Change of venue—Plaintiffs.

3859. Change of venue—Defendants

SEC. 154. Previous to the commencement of any trial before a justice of the peace the defendant, or his or her agent, may make oath that it is the belief of such deponent that the defendant can not have a fair and impartial trial before such justice, whereupon it shall be the duty of the justice, upon payment of his fees for such change of venue only, immediately to transmit all papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the suit had been instituted before him.

Provided, That where the nearest justice of the peace shall be disqualified or for any reason shall be unable to act, if affidavit for change of venue shall state that the nearest justice of the peace is related to the parties or either of them, within the third degree, or is a material witness in the action, or is sick, or is absent from the state, the justice of the peace shall transmit all papers in said case to the next nearest justice of the peace, who shall proceed as if the suit had been instituted before him.

And, provided, further, That where change of venue is taken in all cases of forcible entry and detainer, or forcible entry or forcible detainer, the parties so taking change of venue shall give a bond with good and sufficient sureties for the payment of all rents to become due from and after the date of the application for any change.

Legislation. Sec. 3859. Act 1861 p. 228 § 31. Amended by Act 1862 p. 77 § 7. R. S. p. 403 § 31. Amended by R. S. p. 473 §§ 1 and 2. G. L. § 1512. G. S. § 1963.

Amended by Act of 1891 p. 254 § 1, which last Act was amended by Act 1903 p. 301 § 1. The amendment of 1903 brings in the two provisos of the section. The G. L. Sec. read the same as the first paragraph of the text except that it read "upon payment of all costs accruing up to the time the change of venue is taken" instead of "upon payment of his fees for such change of venue only." The section as printed in the G. S. contains both these quoted clauses although a contradiction in terms and how the phrase "upon payment of his fees for such change of venue only" got into the G. S. Section it is impossible to say, because we find no amendment authorizing such change until the Act of 1891.

CITATIONS.

This section cited, but not determined whether it is or is not applicable before a magistrate.—*Braisted v. Peo.*, 38 C. 51, 88 P. 151.

A right to have a change to the next nearest justice may be waived and by consent to a transfer to a third justice jurisdiction is conferred upon him.—*Squires v. Curtain*, 42 C. 51., 93 P. 1106.

When a cause has been transferred to one who is not the nearest justice it should be returned to the justice from whom it came.—*Otero County v. Hoffmire*, 9 A. 529, 49 P. 376.

3860. Change of venue—Plaintiffs.

SEC. 155. Plaintiffs shall in all cases be allowed a change of venue, in the same manner as is now provided by law for defendants.

Legislation. Sec. 3860. Act 1862 p. 78 § 12. R. S. p. 418 § 105. G. L. § 1584. G. S. § 1964.

III. CRIMINAL PROCEEDINGS.

Section.

3861. Duty of constables to arrest.

3862. Justice issue warrant on knowledge or oath—Jury assess fine.

3863. Jury trial—Venire—Jury empaneled and sworn.

3864. Verdict of jury—Judgment.

3865. Jury fix punishment.

[Jurisdiction of justice in vagrancy cases, section 1828.]

[For jurisdiction of justice in misdemeanor cases see sections 1696-1702.]

[Jurisdiction of justice in assault and battery cases, section 1660.]

[See also Chapter 55, Fugitives.]

[Jurisdiction of justice over local option law. Section 4106.]

III. CRIMINAL PROCEEDINGS.

*Continued.***Section.**

- 3866. Plea of guilty—Duty of justice.
 - 3867. Execution on judgment for fines and costs.
 - 3868. Capias issued when no goods found.
 - 3869. Appeal—Bond—Stay of proceedings.
 - 3870. Judgment against defendant and security.
 - 3871. Justice return names of witnesses.
 - 3872. Limitation of actions.
 - 3873. Justice to report fines quarterly—Penalty for failure.
 - 3874. Justice report quarterly to county commissioners.
 - 3875. County treasurer report fines paid.
 - 3876. Constable pay over^r fines collected—Penalty for failure.
 - 3877. Malicious prosecution—Costs.
 - 3878. Examination—Recognizance.
 - 3879. Justice certify default to clerk.
 - 3880. Prisoner may make statement on examination.
 - 3881. Change of venue—Causes.
 - 3882. Threats against life and property.
 - 3883. Judge to examine record and evidence on examination.
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3861. Duty of constables to arrest.

SEC. 156. It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts and other process to him lawfully directed; and generally, to do and perform all things appertaining to the office of constable within this state.

[Justice may let prisoner to bail. Sections 1942-1943.]

[For arrest and preliminary examination see sections 1932-1936.]

Legislation. Sec. 3861. Act 1861 p. 235 § 66. R. S. p. 411 § 66. G. L. § 1547. G. S. 2041.

3862. Justice issue warrant on knowledge or oath—Jury assess fine.

SEC. 157. In all cases of assault, assault and battery, and affrays, any justice of the peace may, upon his knowledge, or upon

the oath of any competent person, issue his warrant to any constable of his county for the arrest of every person charged with either of said offenses; and upon the arrest of such person shall cause a jury to be summoned, unless the party accused shall dispense with a jury, who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just, not, however, to be less than three nor more than one hundred dollars.

[Justice to transfer juvenile cases to county court. Section 592.]

Legislation. Sec. 3862. Act 1861 p. 236 § 69. R. S. p. 412 § 69. G. L. § 1548. G. S. § 2042.

The text is superseded by the later Act § 1659, in so far as it relates to the punishment for assault or assault and battery.

3863. Jury trial—Venire—Jury empaneled and sworn.

SEC. 158. In all trials before justices of the peace for offenses within their jurisdiction, the defendant may demand a jury, which shall consist of six jurors, or a less number, not fewer than three, if the same be agreed upon by the state and the accused, and thereupon the justice shall issue a venire for said jury as in civil cases in justice courts, and said jury shall be empaneled and sworn as in cases of misdemeanor in courts of record, but nothing herein shall be held to authorize a jury in justice courts on preliminary examinations.

Legislation. Sec. 3863. § 1 of Act 1899 p. 243, entitled:

AN ACT

Fixing the Number of Jurors in All Trials Before Justices of the Peace for Offenses Within Their Jurisdiction, and Providing the Method of Procuring and Empanelling the Same.

3864. Verdict of jury—Judgment.

SEC. 159. Upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket, or record book, and proceed to render judgment thereon for the amount of said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants without costs.

Legislation. Sec. 3864. Act 1861 p. 236 § 70. R. S. p. 412 § 70. G. L. § 1549. G. S. § 2043.

3865. Jury fix punishment.

SEC. 160. That in all criminal cases tried by jury in justice courts it shall be the duty of such jury, where the defendant is found guilty, to fix the punishment therefor in its verdict.

Legislation. Sec. 3865. Act 1903 p. 304 § 1, entitled:

AN ACT

Defining the Powers and Duties of Juries in Justice Courts in Criminal Cases.

3866. Plea of guilty—Duty of justice.

SEC. 161. If any person, accused of either of the above offenses, shall confess himself guilty, the jury or the justice, if he shall not require a jury, shall hear the evidence and assess the fine, and the justice shall enter judgment and issue execution, subject to appeal as in other cases.

[See also section 1700.]

Legislation. Sec. 3866. Act 1861 p. 237 § 76. R. S. p. 413 § 76. G. L. § 1555. G. S. § 2044.

The section 1700, cited in the official note, is confined to petit larceny and receiving stolen goods. The text also is limited to "either of the above offenses," which offenses are those mentioned in § 3862.

CITATIONS.

Where a party went before a justice and swore to a complaint against himself for an assault and upon his own confession was fined, he was not in jeopardy and could not plead former conviction in a subsequent prosecution for the same assault.—*De Bord v. Peo.*, 27 C. 379, 61 P. 600.

3867. Execution on judgment for fines and costs.

SEC. 162. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs, which may be levied upon any personal property of the defendant or defendants, which shall be sold for whatever it will bring in cash, after giving notice as in other cases; *Provided, however*, That if the party so convicted have a family, then the constable shall reserve from execution one bed and bedding, one cow, and five hundred dollars' worth of household and kitchen furniture.

[For additional exemptions see sections 3627 and 3628.]

Legislation. Sec. 3867. Act 1861 p. 236 § 71. R. S. p. 412 § 71. G. L. § 1550. G. S. § 2045.

3868. Capias issue when no goods found.

SEC. 163. If the constable shall return, on such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a capias against the body of the defendant or defendants; and the constable shall arrest such person or persons and commit him or them to the jail of the county, there to remain forty-eight hours; and if the fine exceeds three dollars, then to remain in the said jail twenty-four hours for every two dollars over and above the said three dollars, and so on, in proportion to amount of said fine.

Legislation. Sec. 3868. Act 1861 p. 237 § 72. R. S. p. 413 § 72. G. L. § 1551. Amended by G. S. § 2046, Act 1881 p. 166 § 1.

The amendment reduced the amounts ten and five dollars, to three and two dollars, respectively.

3869. Appeal—Bond—Stay of proceedings.

SEC. 164. If any person convicted of any criminal offense, before any justice of the peace, shall wish to appeal to the county court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs, and upon producing the same to the clerk of the county court of the proper county, the clerk shall write a bond to the people of the state of Colorado, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against the defendant; which the said party appealing shall execute, with sufficient security, to be approved by the said clerk; and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings, and return the papers to the next succeeding term of the county court, when the same shall be tried; *Provided*, All such appeals shall be prayed for and the bond executed within ten days after the judgment rendered.

Legislation. Sec. 3869. Act 1861 p. 237 § 73. R. S. p. 413 § 73. G. L. § 1552. G. S. § 2047.

CITATIONS.

This section provides for appeal in criminal cases and secs. 3848, 3849 provide for appeal in civil cases.—*Knight v. Peo.*, 11 C. 310, 17 P. 903.

The bond provided for in this section is conditioned not for the appearance of the accused but for the payment of the fine.—*Lawn v. Peo.*, 11 C. 344, 18 P. 281.

Upon appeal from a justice the county court has jurisdiction to sentence a defendant to a term in the county jail.—*Vickers v. Peo.*, 30 C. 69, 69 P. 512.

A bond approved by a justice of the peace is without effect and the mere deposit of the bond with the clerk of the county court without approval gives that court no jurisdiction.—*Koller v. Peo.*, 45 C. 66, 99 P. 317.

The county court can not on appeal render a judgment affecting the rights of an absent defendant.—*Morris v. Peo.*, 5 A. 139, 38 P. 78.

Under this and sec. 3870 if no fine is assessed by the jury there is no authority for the rendition of a judgment by the court.—*Fuqua v. Peo.*, 10 A. 63, 48 P. 1053.

3870. Judgment against defendant and security.

SEC. 165. If the defendant shall be found guilty in the county court, judgment shall be rendered against both principal and security in the appeal bond for the amount of the fine assessed by the jury in said court, and all costs that may have accrued.

Legislation. Sec. 3870. Act 1861 p. 237 § 74. R. S. p. 413 § 74. G. L. § 1553. G. S. § 2048.

CITATIONS.

On appeal the county court may sentence the defendant to jail upon conviction in that court.—*Vickers v. Peo.*, 30 C. 69, 69 P. 512.

If no fine is assessed by the jury there is no authority for the rendition of judgment by the county court.—*Fuqua v. Peo.*, 10 A. 62, 48 P. 1053.

3871. Justice return names of witnesses.

SEC. 166. When any defendant convicted of any of the said offenses appeals to the county court it shall be the duty of the justice to return to the clerk, when he returns the papers in the case,

the names of all material witnesses who shall have testified on the trial, and the clerk shall issue subpoenas for them.

Legislation. Sec. 3871. Act 1861 p. 237 § 75. R. S. p. 413 § 75. G. L. § 1554. G. S. § 2049.

3872. Limitation of actions.

SEC. 167. No person shall be proceeded against for the commission of any offense herein specified, after the expiration of twelve months from the time the offense was committed, unless the offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

[See also section 1949.]

Legislation. Sec. 3872. Act 1861 p. 238 § 77. R. S. 413 § 77. G. L. § 1556. G. S. § 2050.

3873. Justice to report fines quarterly—Penalty for failure.

SEC. 168. It shall be the duty of each of the justices of the several counties to return, quarterly, to the county treasurer thereof, a list of all fines before them assessed, stating the name or names of the defendant or defendants, and to pay over to said county treasurer any and all money by him received, arising from fines by him received, and a failure of any such justice before whom any fine shall have been assessed or paid, under the provisions of this chapter, to make such returns, shall work a forfeiture of double the amount of the fines assessed before them, to be recovered as prescribed in the succeeding section.

Legislation. Sec. 3873. Act 1861 p. 238 § 78. R. S. p. 414 § 78. G. L. § 1557. G. S. § 2051.

3874. Justice report quarterly to county commissioners.

SEC. 169. Every justice of the peace or other magistrate by whom any fine or penalty has been imposed which under the statute should be paid into the general school fund, shall at the next regular quarterly meeting of the board of county commissioners submit an itemized report showing date of trial, title of case, nature of offense and amount of fine, giving amounts collected, amounts uncollected, and accompany said report with receipts from the county treasurer for amounts so collected and paid over to him.

Legislation. Sec. 3874. Act 1893 p. 304 § 1, entitled:

AN ACT

To Provide for Reporting Fines Collected for the Benefit of the General School Fund.

3875. County treasurer report fines paid.

SEC. 170. The county treasurer, at the time of rendering to the county superintendent of schools his quarterly certificate of taxes collected (as provided in section sixty-six (66) of chapter XCVII, being general section three thousand and sixty-one (3061) of the General Statutes of the state of Colorado) shall show separately in said certified statement the amounts received from fines and by whom paid in.

[Section 3061 referred to is section 5899.]

Legislation. Sec. 3875. * Act 1893 § 2, cited under § 3874.

3876. Constable pay over fines collected—Penalty for failure.

SEC. 171. The constable charged with the collection of any such fine shall account for and pay over to the justice of the peace imposing the fine all moneys which he may have collected, immediately, and upon failure to do so, he shall forfeit and pay double the amount of money so received, to be recovered in the name of the county treasurer of the proper county, for the use of the county, in any court having jurisdiction thereof; the constable shall also be authorized to receive all fines before execution issued, and shall account therefor and pay over the same, in the same manner and under the same penalties as before provided.

Legislation. Sec. 3876. Act 1861 p. 238 § 79. R. S. p. 414 § 79. G. L. § 1558. G. S. § 2052.

3877. Malicious prosecution—Costs.

SEC. 172. In all criminal prosecutions before a justice of the peace, where the party accused shall be found not guilty, and it shall appear to the justice before whom such case shall be tried that there was no reasonable ground for his prosecution, and that it was maliciously entered, in such case the justice of the peace

is hereby authorized to give judgment against the complainant for the costs of said suit, and issue execution thereon.

[See also sections 1077 and 1078.]

Legislation. Sec. 3877. Act 1861 p. 238 § 80. R. S. p. 414 § 80. G. L. § 1559. G. S. § 2053.

3878. Examination—Recognizance.

SEC. 173. Any justice of the peace, before whom any person is brought on complaint for any crime, misdemeanor or other offense, bailable by the laws of this state, may take the recognizance of such person or persons, with surety or sureties in a reasonable sum, for his appearance before said justice for further examination at a future time, not exceeding ten days; at which time and place all subpoenas in the case shall be made returnable.

Legislation. Sec. 3878. Act 1861 p. 241 § 95. R. S. p. 417 § 95. G. L. § 1574. G. S. § 2054.

CITATIONS.

The certification by the justice required by sec. 3879 is essential to the maintenance of an action on the recognizance.—*Connor v. Peo.*, 4 C. 135.

A justice has jurisdiction to approve a recognizance, though the sheriff received it and immediately discharged the prisoner. A recognizance for preliminary examination need not be enrolled on the justices' record book.—*Haney v. Peo.*, 12 C. 347, 21 P. 40.

Under this and sec. 3879 the omission of the sureties name from the body of the recognizance did not affect his liability thereon.—*Murray v. Peo.* (Nov. 1910), 111 P. 712.

3879. Justice certify default to clerk.

SEC. 174. If the person thus recognized shall not appear before the said justice at the time appointed for further examination, as set forth in the recognizance, it shall be the duty of the said justice to note his default upon the record, and certify the same recognizance, with the record of the default in the performance of the condition thereof, to the district court of his county, that a scire facias may issue thereon, or an action of debt be brought for the recovery of the penalty.

[Justice may let prisoners to bail. Sections 1942-1948.]

Legislation. Sec. 3879. Act 1861 p. 241 § 96. R. S. p. 417 § 96. G. L. § 1575. G. S. § 2055.

CITATIONS.

The certification by the justice required by this section is essential to the maintenance of an action on the recognizance.—*Connor v. Peo.*, 4 C. 135.

A surety was not discharged by the fact that the sheriff took the prisoner to another county to enable him to obtain bondsmen.—*Haney v. Peo.*, 12 C. 347, 21 P. 40.

Under this and sec. 3878 the omission of the sureties name from the body of the recognizance did not affect his liability thereon.—*Murray v. Peo.* (Nov. 1910), 111 P. 712.

3880. Prisoner may make statement on examination.

SEC. 175. That in all preliminary examinations of persons arraigned before justice of the peace upon any criminal charge, the accused, if he so desire, shall have the privilege, after all witnesses have been heard, of making a statement before the justice, and such statement may be made under oath or otherwise, as the accused may elect.

[Accused may testify. Section 1984.]

Legislation. Sec. 3880. Act 1876 p. 83 § 1. G. L. § 1586. G. S. § 2056.

CITATIONS.

At a preliminary examination the accused has the right to be present and hear all the witnesses, participate in their examination and be heard also in his own behalf.—*Dolph In re*, 17 C. 38, 28 P. 471.

3881. Change of venue—Causes.

SEC. 176. Persons arrested and brought before justices of the peace for examination on charge of any criminal offense may have such examination removed from before such justice by filing an affidavit that said justice is so prejudiced against him or them that he or they believe they cannot have a fair and impartial investigation before such justice, in which case the justice shall immediately transmit all papers connected with such examination to the nearest acting justice; or, in case of his absence or inability to act, to any other justice of the peace of the next adjoining pre-

cinct in the county, who shall proceed to hear and determine the matter as though it originally commenced before him; *Provided*, The defendant shall be held in charge till the complaint shall be heard and disposed of by the justice to whom the papers shall be sent as aforesaid.

Legislation. Sec. 3881. G. S. § 2057. Act 1879 p. 209 § 1, entitled:

AN ACT

Providing for a Change of Venue in Preliminary Examinations Before Justices of the Peace.

CITATIONS.

Upon proper showing the accused is entitled to a change of venue, without costs.—*Dolph, In re*, 17 C. 38, 28 P. 471.

3882. Threats against life and property.

SEC. 177. Hereafter when a party is brought before a justice of the peace on the charge of making threats against the life or property of any person in this state, or shall threaten to break the peace, the justice shall write down the evidence in full, and shall (if defendant is required to give bond for his good behavior) transmit such testimony, together with the other papers in the case, to the district court of the county wherein the offense was committed.

Legislation. Sec. 3882. Act 1877. G. L. § 1594. G. S. § 2058.

CITATIONS.

Where only the written evidence of the justice was considered by the district court, such evidence may be examined and weighed on appeal.—*Fitzpatrick v. Peo.*, 36 C. 312, 85 P. 650.

3883. Judge to examine record and evidence on examination.

SEC. 178. When the clerk receives such papers from the justice, he shall docket the case, and thereafter the case shall stand for argument at the following term of court. The judge shall examine the record and evidence, and if upon such record and evidence the judge shall be of the opinion that the defendant was improperly bound over, he shall discharge the defendant, and tax the

costs against the county, or the prosecuting witness, as in his judgment is proper. It shall be the duty of the court to examine and pass upon the record and evidence, even though the prosecuting witness does not appear to prosecute. If the judgment of the justice shall be affirmed, the judge may require the defendant to renew his bond, or may discharge the defendant therefrom; in such cases the cost shall be taxed against the defendant.

Legislation. Sec. 3883. Act 1877. G. L. § 1595. G. S. § 2059.

CITATIONS.

In the absence of evidence tending to show that the prosecution was malicious the court was not justified in taxing costs against prosecuting witness under sec. 1946.—*Fitzpatrick v. Peo.*, 36 C. 312, 85 P. 650.

IV. BONDS OF JUSTICES AND CONSTABLES AND ACTIONS THEREON.

Section.

- 3884. Bonds of justices and constables.
- 3885. Copy of bond evidence.
- 3886. Securities not bound beyond amount of bond.
- 3887. Execution—Property of principal taken first.
- 3888. Bonds remain in force three years.
- 3889. Judgment for full penalty of bond.
- 3890. Execution from time to time for breaches.

3884. Bonds of justice and constable.

SEC. 179. Every justice of the peace and constable, before entering upon the duties of his office, shall give bond in precincts having 25,000 or more, in the sum of ten thousand dollars; in precincts having a population of less than 25,000 and more than 10,000, in the sum of five thousand dollars; in precincts having a population of less than 10,000 and more than 5,000, in the sum of two thousand dollars; in all other precincts in the sum of one thousand dollars, payable to the people of the state of Colorado, with the sureties to be approved, as required by law, and conditioned for the faithful discharge of the duties of his office, and that he will be liable for all moneys which may come to his hands

by virtue of his office, and shall subscribe the oath of office, provided by law, which shall be endorsed on his bond.

[Bond of special constable. Section 3900.]

Legislation. Sec. 3884. Act 1893 p. 302 § 1, amending G. S. § 2069. Act of 1877, G. L. § 552, a re-enactment of R. S. p. 189 § 2. The Act before amendment required a uniform bond of \$2,000 without regard to population of precinct.

Under Act of 1862 p. 76 § 1, a justice of the peace gave bond in the sum of \$2,000.

CITATIONS.

A constable and sureties are liable on his bond, to a mortgage of property seized under execution against mortgagor.—*Newman v. Peo.*, 4 A. 48, 34 P. 1007.

An action on a constable's bond is maintainable only in the name of the people. The judgment must be for the full penalty of the bond.—*Taylor v. Blyth*, 9 A. 82, 47 P. 662.

3885. Copy of bond evidence.

Sec. 180. In suits on the official bonds of justices of the peace and constables, a copy of such bond, authenticated under the official signature and seal of the clerk of the county with whom it is filed, may be read in evidence.

Legislation. Sec. 3885. Act 1861 p. 240 § 89. R. S. p. 416 § 89. G. L. § 1568. G. S. § 2070.

3886. Securities not bound beyond amount of bond.

Sec. 181. Securities shall not be liable in execution beyond the amount of the penalty of their bond; but the liability of the principal shall continue after the penalty of the bond is exhausted, and the court may continue to award execution, as occasion may require.

Legislation. Sec. 3886. Act 1861 p. 241 § 93. R. S. p. 417 § 93. G. L. § 1572. G. S. § 2071.

CITATIONS.

An action on a constable's bond is maintainable only in the name of the people.—*Taylor v. Blyth*, 9 A. 82, 47 P. 662.

3887. Execution—Property of principal taken first.

Sec. 182. When judgment shall have been rendered against

any justice of the peace or constable, and his securities on his official bond, execution may issue against all of them; but the officer executng the same shall not levy upon the property of the securities until he shall fail to find sufficient property of the justice of the peace, or constable, to satisfy such execution; *Provided, however,* The execution shall be a lien on the property of the securities, as in other cases.

Legislation. Sec. 3887. Act 1861 p. 240 § 90. R. S. p. 416 § 90. G. L. § 1569. G. S. § 2072.

CITATIONS.

A constable and his sureties are liable in damages to a mortgagee of property seized under an execution against the mortgagor.—*Newman v. Peo.*, 4 A. 49, 34 P. 1007.

3888. Bonds remain in force three years.

SEC. 183. All bonds given by justices of the peace and constables shall remain in force three years after the expiration of their respective terms of office; and when such bonds are renewed, or new bonds given, such renewal or giving of a new bond shall not satisfy or vacate any such previous bond; but each bond shall stand good in relation to all matters and things done or omitted to be done within the term of office for which such bond shall have been given; *Provided,* That where by law any justice or constable shall be authorized or required to complete any business, or perform any duties growing out of business commenced and in their hands previous to going out of office, the bond shall apply to such cases, until such business is concluded by such justice or constable.

Legislation. Sec. 3888. Act 1861 p. 239 § 84. R. S. p. 415 § 84. G. L. § 1568. G. S. § 2073.

3889. Judgment for full penalty of bond.

SEC. 184. In all cases of suits on the official bonds of justices of the peace and constables, judgment shall be entered for the full penalty of the bond in favor of the people of the state of Colorado; but execution shall only issue for the amount found to be due, with interest and costs.

Legislation. Sec. 3889. Act 1861 p. 240 § 91. R. S. p. 416 § 91. G. L. § 1570. G. S. § 2074.

CITATIONS.

An action on a constable's bond is maintainable only in the name of the people. The judgment on the bond must be for the full penalty and it is for the benefit of all who may become interested in its enforcement.—*Taylor v. Blyth*, 9 A. 82, 47 P. 662.

3890. Execution from time to time for breaches.

SEC. 185. After such judgment is obtained the court may from time to time award execution against the defendant or defendants for any breach of the conditions of their bond, or for the violation of any of the provisions of this chapter; no such subsequent execution shall, however, be issued until the defendants shall be summoned, by writ of seire facias, in the usual form, to appear and show cause why such execution shall not be awarded.

Legislation. Sec. 3890. Act 1861 p. 240 § 92. R. S. p. 416 § 92. G. L. § 1571. G. S. § 2075.

V. GENERAL PROVISIONS.

Section.

- 3891. Justice and constable shall reside in precinct.
- 3892. Justice keep record and file papers.
- 3893. Absence of justice on day of trial.
- 3894. Succeeding justice proceed on docket.
- 3895. Justice resigning or removing, deliver docket to nearest justice.
- 3896. Upon expiration of term justice deliver docket, etc., to successor.
- 3897. Failure of justice to deliver docket, etc., penalty.
- 3898. Summary proceedings against justice or constable for moneys collected.
- 3899. On payment by officer proceedings stayed.
- 3900. Justice may appoint special constable—Term—Deputy constable—Term—Bond—Compensation.
- 3901. Justice preserve order—Contempt.

3891. Justice and constable shall reside in precinct.

SEC. 186. Each justice of the peace shall reside and have his office in the precinct for which he was elected.

[When justice shall not act as attorney. Section 248.]

[When justice shall act as coroner. Sections 1314 and 1360.]

[Justice shall aid in canvass of votes. Section 2272.]

Legislation. Sec. 3891. R. S. p. 189 § 3. G. L. § 553. G. S. § 2060.

3892. Justice keep record and file papers.

SEC. 187. It shall be the duty of every justice; whenever a suit shall be commenced before him, to record in a book kept for that purpose, the names of the parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be delivered; and throughout the whole of the proceedings in any suit it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.

Legislation. Sec. 3892. Act 1861 p. 221 § 4. R. S. p. 395 § 4. G. L. § 1485. G. S. § 2061.

CITATIONS.

The provision of this section amounts to a requirement that the nature of the cause of action shall be set forth.—*Liss v. Wilcoren*, 2 C. 87.

The omission of the justice to record the matters required in his docket may be supplemented by proof allunde.—*Behymer v. Nordloh*, 12 C. 353, 21 P. 37.

The docket of a justice is only prima facie evidence of what is required to be set down therein and of what in fact there appears. Recitals of the service of process may be contradicted.—*Squires v. Detwiler*, 45 C. 367, 101 P. 342. *Grimes v. Greenblatt*, 47 C. 508, 107 P. 1111. *Hamill v. Ferrier*, 8 A. 270, 45 P. 523.

Justices' courts are not courts of record.—*Hamill v. Ferrier*, 8 A. 270, 45 P. 523.

3893. Absence of justice on day of trial.

SEC. 188. That whenever a justice of the peace before whom

an action is pending, is unable, on account of sickness or absence from the county, to attend at the time and place fixed for the trial before such justice, the next nearest justice of the peace within the county may, at his request, attend at the time and place fixed for the trial and continue the cause to some other day, which shall not be more than ten days, or, if the parties shall agree, may hear the cause instead and in behalf of the justice calling him; and the judgment so entered shall have the same force and effect as if rendered by the justice before whom the action is pending.

Legislation. Sec. 3893. Act 1907 p. 493 § 1, entitled, "An Act in regard to justices of the peace."

3894. Succeeding justice proceed on docket.

SEC. 189. When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided in the next section of this act, such justice receiving the same may proceed to the completion of all unfinished business, the issuing of executions upon judgments remaining unsatisfied upon said docket, and collect the same; and shall have the same power in respect of such docket and papers as if the same pertained to proceedings originally instituted before him.

Legislation. Sec. 3894. Act 1861 p. 238 § 81. R. S. p. 414 § 81. G. L. § 1560. G. S. § 2062.

3895. Justice resigning or removing, deliver docket to nearest justice.

SEC. 190. When any justice of the peace shall resign his office, or remove from the county or district in which he was elected, it shall be his duty to deliver his docket and papers relating to the business transacted before him, to the nearest justice of the peace of his county and to return to the office of the clerk of the county all copies of the statutes which he may have received from that office; and in case of the death of any justice of the peace it shall be the duty of the person having possession of said docket, papers and statutes to deliver them over as aforesaid.

Legislation. Sec. 3895. Act 1861 p. 239 § 82. R. S. p. 414 § 82. G. L. § 1561. G. S. § 2063.

3896. Upon expiration of term justice deliver docket, etc., to successor.

SEC. 191. That whenever the term of office for which any justice of the peace may have been elected shall expire, it shall be the duty of such officer to deliver over his docket statutes and all papers relating to the business transacted before him, to his successor in office, upon demand, after such successor shall have been qualified according to law, whose duty it shall be to proceed to the completion of all unfinished business, to issue executions upon judgments remaining unsatisfied upon such docket, and to collect the same, and have the same power in respect to such docket and papers as if the same pertained to proceedings originally instituted before him.

Legislation. Sec. 3896. Act 1876 p. 82 § 1. G. L. § 1585. G. S. § 2064.

CITATIONS.

A justice wrongfully holding over after expiration is an officer *de facto* as to the public. He and his sureties are liable to his successor for fees received.—*Morris v. Peo.*, 8 A. 382, 46 P. 693.

Sureties on an assessor's bond are not within the terms of this or sec. 3897 and are not liable for fees collected after the expiration of his term.—*Peo. v. Jackson*, 16 A. 310, 64 P. 1051.

3897. Failure of justice to deliver docket, etc.—Penalty.

SEC. 192. Any justice of the peace failing or refusing to deliver any statutes, books, dockets or papers, as required by this chapter, for the space of ten days after the same are demanded, shall forfeit and pay the sum of ten dollars, to be recovered by an action of debt in the name of the county treasurer, for the benefit of the county, besides being, together with his securities in his official bond, liable to the county and to all persons interested for all damages and losses which may be sustained by reason of such failure or refusal.

Legislation. Sec. 3897. Act 1861 p. 239 § 85. R. S. p. 415 § 85. G. L. § 1564. G. S. § 2065.

CITATIONS.

A justice wrongfully holding over after expiration is an officer de facto as to the public. He and his sureties are liable to his successor for fees received.—*Morris v. Peo.*, 8 A. 382, 46 P. 693.

Sureties on an assessor's bond are not within the terms of this or sec. 3896 and are not liable for fees collected after the expiration of his term.—*Peo. v. Jackson*, 16 A. 311, 64 P. 1051.

3898. Summary proceedings against justice or constable for moneys collected.

SEC. 193. Upon the failure of a justice of the peace or constable to pay over any money by him collected or received, as herein provided, to any person entitled to receive the same, his or her agent or attorney, such person may proceed against such justice or constable in a summary way, either before a district court or some justice of the peace of the proper county, by motion, upon giving to such justice or constable five days' notice of the application, and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon for such detention; and shall have execution therefor.

Legislation. Sec. 3898. Act 1861 p. 239 § 86. R. S. p. 415 § 86. G. L. § 1565. G. S. § 2066.

3899. On payment by officer proceedings stayed.

SEC. 194. If any justice or constable, against whom proceedings shall have been commenced, as provided in the preceding section, shall pay or satisfy the amount claimed by the party prosecuting, with the costs, the proceedings shall be dismissed, without judgment for the damages specified in the preceding section.

Legislation. Sec. 3899. Act 1861 p. 240 § 87. R. S. p. 416 § 87. G. L. § 1566. G. S. § 2067.

3900. Justice may appoint special constable—Term—Deputy Constable—Term—Bond—Compensation.

SEC. 195. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with an indictable offense

will escape, or that goods or chattels will be removed before application can be made to a qualified constable, or whenever no qualified constable can conveniently be found in the township; and the person so appointed shall act as constable in that particular case and no other and any temporary appointment so made, as aforesaid, will be made by a written indorsement, under the seal of the justice deputing, on the back of the process which the person receiving the same shall be deputed to execute; *Provided, however*, That the above shall not apply to justice precincts having a population of twenty-five thousand (25,000) and over, in which precincts the duly elected and qualified constable may appoint a suitable person as deputy constable in his precinct, who shall serve as such deputy constable during the term of office of the said constable so appointing him, unless he shall die, resign, or be removed by the said constable, and the person so appointed as a deputy constable, before entering upon the duties of his office, shall give bond in the sum of two thousand (2,000) dollars, payable to the people of the state of Colorado, with sureties to be approved as required by law, and conditioned for the faithful discharge of the duties of his office, and that he will pay over all moneys which may come to his hands by virtue thereof, and shall subscribe the oath of office provided by law, which shall be endorsed on his bond. The deputy constable shall do and perform any and all duties prescribed by law to be performed by the duly elected constable. All warrants and writs issued in the justices of the peace courts in criminal cases shall be served by the duly elected constable or the deputy constable. Such deputy constable shall receive such compensation as may be allowed by the board of county commissioners not to exceed the sum of one hundred dollars per month.

[Non-resident can not be appointed, section 4675.]

[Justice may appoint person to excuse warrant. Section 1939.]

Legislation. Sec. 3900. Act 1903 p. 302 § 1, amending G. S. § 2068. G. L. § 1546. R. S. p. 411 § 65. Act 1867 p. 75 § 1, amending Act 1861 p. 235 § 65. The proviso is the amendment of 1903.

CITATIONS.

By some authorities it is held that whether or not a qualified constable could be "conveniently found in the township is a question exclusively within the power of the justice to determine."—*Mayhew v. Smith*, 42 C. 539, 95 P. 549.

CITATIONS CONTINUED.

The appointment of a special constable may be made by a separate paper securely fastened to the back of the writ.—*Lewis v. Smith*, 45 C. 559, 101 P. 762.

The appointment of a special constable must be in strict conformity with the statute. The defendant must show that the causes authorizing the appointment existed.—*Cort v. Newman*, 6 A. 156, 40 P. 242. *Hamill v. Ferrier*, 8 A. 269, 45 P. 523.

Before a justice is authorized to appoint a special constable it must appear that some legal right is liable to be jeopardized. The convenience mentioned in the statute must be a legal one.—*Cunningham v. Bostwick*, 7 A. 171, 43 P. 153.

Sufficient authority exists for the appointment of a special constable when the regular constable has left the county.—*Brewer v. Mock*, 14 A. 457, 60 P. 578.

The fact that there is no legally elected constable authorizes the appointment of a special constable. An appointment without a seal attached to the signature of the justice was invalid.—*Bruce v. Endicott*, 16 A. 508, 66 P. 679.

3901. Justice preserve order—Contempt.

SEC. 196. Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner, and for failure to do so, such person shall be fined by the said justice for contempt, in any sum not more than five dollars.

[Justice may take acknowledgments. Section 684.]

Legislation. Sec. 3901. Act 1861 p. 228 § 30. R. S. p. 403 § 30. G. L. § 1511. G. S. § 1966.

CHAPTER LXXIX.

LABOR.

Section.

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LABOR.*Continued.***Section.**

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3930. Penalty for violation of preceding section.

3930-A. Bond to protect employes and material men on railroads, reservoirs and ditches.

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3930-C. Procedure to protect claimant.

3902. Bureau of labor statistics—Bond—Statistician—Stenographer.

SECTION 1. That there is hereby established a separate and distinct bureau to be known as the bureau of labor statistics of the state of Colorado, which bureau shall be charged with the collection of statistics pertaining to the internal resources of the state, labor and agriculture. The secretary of state shall be designated the ex-officio commissioner of said bureau. He shall appoint a deputy within ten days after the approval of this act, who shall hold his office for the term of two years. He shall be an elector of this state, well versed in the collection of statistics and matters relating thereto. The deputy labor commissioner shall, within twenty days after receiving his commission, and before entering upon the duties of his office, give bonds to the state of Colorado

in the sum of five thousand (\$5,000) dollars to be approved by the attorney general. Said deputy labor commissioner shall receive an annual salary of twenty-five hundred (\$2,500) dollars, payable as other state officers.* The said deputy labor commissioner shall, upon entering upon his duties, recommend and the secretary of state appoint one statistician who shall hold his office for the term of two years and who shall be an elector of the state; he shall receive an annual salary of fifteen hundred (\$1,500) dollars, payable as other state officers. Said deputy labor commissioner shall, upon entering upon the duties of his office, recommend and the secretary of state appoint one stenographer who shall receive an annual salary of twelve hundred (\$1,200) dollars, payable as other state officers.

Legislation. Sec. 3902. Sec. 1 of Act of 1909 p. 300 approved April 19 with the Emergency Clause. Substitute for § 3902 which was § 1 of Act of 1887 p. 62, entitled:

AN ACT

To Establish and Support a Bureau of Labor Statistics.

The amendment added all that follows the star. It raised the bond from \$2,000 to \$5,000 and raised the salary from \$1,800 to \$2,500.

3903. Duties of commissioner—Statistics—Report to general assembly.

SEC. 2. The duties of the commissioner shall be to collect, systematize, and present in biennial reports to the legislature, statistical details relating to all departments of labor in the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the estimated number of persons employed by the several industries within the state, the operation of labor saving machinery in its relation to hand labor, etc. Said statistics may be classified as follows:

First—In agriculture.

Second—In mining.

Third—In mechanical and manufacturing industries.

Fourth—In transportation.

Fifth—In clerical and other skilled and unskilled labor not above mentioned.

Sixth—The amount of cash capital invested in lands, in building and machinery, severally, and means of production and distribution generally.

Seventh—The number, age, sex and condition of persons employed; the nature of their employment; the extent to which the apprenticeship system prevails in the various skilled industries; the number of hours of labor per day; the average length of time employed per annum, and the net wages received in each of the industries and employments within the state.

Eighth—The number and condition of the unemployed, their age, sex and nationality, together with the cause of their idleness.

Ninth—The sanitary condition of lands, workshops, dwellings; the number and size of rooms, occupied by the workers, etc.: the cost of fuel, rent, food, clothing and water in each locality of the state; also the extent to which labor saving processes are employed to the displacement of hand labor.

Tenth—The number and condition of the Chinese in the state: their social and sanitary habits; number of married and single; the number employed and the nature of their employment; the average wages per day at each employment, and the gross amount yearly; the amount expended by them in rent, food and clothing, and in what proportion such amounts are expended for foreign and home productions respectively; to what extent their labor comes in competition with the other industrial classes of the state.

Eleventh—The number, condition and nature of the employment of the inmates of the state prison, county jails and reformatory institutions, and to what extent their employment comes in competition with the labor of mechanics, artisans and laborers outside of these institutions.

Twelfth—All such other information in relation to labor as the commissioner may deem essential to further the objects sought to be attained by this statute.

Thirteenth—A description of the different kinds of labor organizations in existence in the state, and what they accomplish in favor of the class for which they were organized.

3904. Reports to the commissioner—Penalty.

SEC. 3. It shall be the duty of all state, county and precinct officers, every owner, operator, or manager of every factory, workshop, mill, mine or mercantile establishment doing business in the state of Colorado where labor is employed to make to the bureau upon blanks furnished by said bureau such reports and returns as the commissioner or his deputies may require for the purpose of compiling all statistics as are authorized by the law creating the department of the bureau of labor statistics, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the deputy commissioner of labor, and shall certify to the correctness of the same. In the report of said bureau no use shall be made of the names of individuals, firms or corporations supplying the information called for by this section, such information being deemed confidential and not for the purpose of disclosing personal affairs. Any refusal on the part of any state, county, precinct, municipal officers, or the owners, operators or managers of any factory, workshop, mill, mine or mercantile establishment to make returns to the deputy commissioner of labor or his deputy shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or by imprisonment not less than ten days nor more than thirty days in the county jail, or by both such fine and imprisonment at the discretion of the court.

Legislation. Sec. 3904. § 2 of Act of 1909 p. 301. Substitute for § 3904, which was Act of 1887 p. 64 § 3. The section before amendment read:

Sec. 3. It shall be the duty of all state, county and precinct officers to furnish, upon the written request of the commissioner, all the information in their power necessary to assist in carrying out the objects of this act. And not more than three thousand (3,000) copies of the printed report shall be furnished to the commissioner for free distribution to the public.

3905. Penalty for obstructing commissioner.

SEC. 4. Any person who wilfully impedes or obstructs the commissioner in the full and free performance of his duties, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten (10) nor more than fifty (50) dollars, or im-

prisonment not less than seven (7) nor more than thirty (30) days in the county jail, or both.

Legislation. Sec. 3905. Act 1887 § 4, cited under § 3902.

3906. Office of bureau—Office hours.

SEC. 5. The office of the bureau shall be open for business from nine o'clock a. m. until five o'clock p. m. every day, except non-judicial days, and the officers thereof shall give to all persons requesting it, all needed information which they may possess.

Legislation. Sec. 3906. Act 1887 § 5, cited under § 3902.

3907. Powers and duties of commissioner.

SEC. 6. The deputy commissioner shall have power to send for persons whenever in his opinion it is necessary and he may examine witnesses under oath, being hereby authorized to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in the office of said deputy commissioner.

It shall also be the duty of the deputy labor commissioner to cause to be enforced all laws regulating the employment of children, minors and women; all laws established for the protection of the health, lives and limbs of all operators in factories, mills, mines, workshops, offices, bakeries, laundries, stores, hotels, railroads, or any public or private works where labor is employed or machinery used; and all laws enacted for the protection of wage workers.

Legislation. Sec. 3907. § 6 of Act of 1909 p. 301. Substitute for § 3907, which was § 6 of Act of 1887 p. 64.

3908. Office.

SEC. 7. The secretary of state shall provide a suitable office for said commissioner, properly furnished.

Legislation. Sec. 3908. Act 1887 § 7, cited under § 3902.

3909. Adjustment of labor disputes—Arbitration—Penalty.

SEC. 8. It shall be the duty of the deputy state labor com-

missioner upon learning of any employer or employes having differences to visit the location of such differences and to make a careful inquiry into the causes thereof, and to advise the respective parties what, if anything, ought to be done or submitted to, by both, to adjust said disputes; and should said parties still fail to agree to a settlement through said deputy labor commissioner's efforts, then the said commissioner shall endeavor to have said parties consent in writing to submit their differences to a board of arbitration to be chosen from the citizens of the state as follows, to wit:

Said employer shall appoint one, and said employes shall appoint one, and these two shall select a third. In the event of the failure of the two to select a third, the deputy labor commissioner shall select the said third member, the three so selected to constitute the board of arbitration, and the findings of said board of arbitration to be final.

The proceedings of said board of arbitration shall be held before the deputy commissioner of labor who shall act as moderator or chairman, without privilege of voting, and who shall keep a record of the proceedings, and have the authority to administer oaths, issue subpoenas for the attendance of any witnesses said board may deem necessary to summon.

Any notice or process issued by the board of arbitration herein created shall be served by the sheriff, coroner, constable, or special officer to whom the same may be directed or in whose hands the same may be placed for service, and the same fees shall be paid as for the service of like process in courts of record.

Upon the failure of the deputy labor commissioner in any case to secure a settlement of differences or the creation of a board of arbitration it shall be his duty to secure a sworn statement from each party to the dispute of the facts upon which their dispute and their reason for not submitting the same to arbitration are based. Any sworn statement made to the deputy labor commissioner under this provision shall be for public use and shall be given publicity in such newspapers as desire it. A failure on the part of either party to a dispute to furnish such sworn statement to the deputy labor commissioner or his deputy, or a failure of any person to obey a subpoena issued by said deputy

labor commissioner shall be considered a misdemeanor and shall be punishable by fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or imprisonment of not less than ninety (90) days, or both fine and imprisonment at the discretion of the court.

Legislation. Sec. 3909. Act 1909 p. 302 § 9, amending § 9 Act 1887, cited under § 3902. The section before amendment read:

Sec. 9. If any difference shall arise between any corporation or person employing twenty-five or more employees, and such employees, threatening to result, or resulting in a strike on the part of such employees, or a lockout on the part of such employer, it shall be the duty of the commissioner, when requested so to do by fifteen or more of said employees, or by the employers, to visit the place of such disturbance, and diligently seek to mediate between such employer and employees.

3910. Commissioner issue bulletin.

SEC. 9. The commissioner of the bureau of labor statistics of the state of Colorado, is hereby authorized by the provisions of this act to compile and issue every three months in each calendar year a four page bulletin containing statistics pertaining to labor or industries of the state, so that the public may have the benefit of immediate information on such subject as is contained in the bulletin.

Legislation. Sec. 3910. Act 1893 p. 70 § 1, entitled:

AN ACT

To Authorize the Commissioner of the Bureau of Labor Statistics of the State of Colorado to Issue Statistical Bulletins Quarterly and to Provide for Free Distribution Thereof to the Public.

3911. Number to be issued.

SEC. 10. Not more than three thousand copies of said bulletin shall be issued quarterly and distributed free to the public, the printing of said bulletins shall be paid for in the same manner and from the same fund as state officers' reports; *Provided*, That nothing contained in this act shall in any manner affect an act of 1887, creating the state bureau of labor statistics and specifying the duties of the commissioner thereof.

[The act of '87 referred to comprises sections 3902-3909.]

Legislation. Sec. 3911. Act 1893 § 2, cited under § 3910.

3912-3914. (Repealed.)

See notes to § 3912-D.

CITATIONS.

It is not competent for the legislature to single out certain industries and impose upon them restrictions with reference to the hours of labor of their employees from which other employers of labor are exempt.—*In re Eight Hour Bill*, 21 C. 29, 39 P. 328.

The eight hour law of 1899 p. 232 held unconstitutional.—*In re Morgan*, 26 C. 416, 58 P. 1071.

The act of 1905 cited in holding the "Women and Children" act of 1903 invalid as applied to laundries.—*Burcher v. Peo.*, 41 C. 502, 93 P. 17.

3912-A. Mining, smelting, etc., dangerous employments.

SEC. 11a. Employment in all under ground mines, under ground workings, open cut workings, open pit workings, smelters, reduction works, stamp mills, concentrating mills, chlorination processes, cyanide processes and coke ovens is hereby declared to be injurious to health and dangerous to life and limb.

Legislation. Sec. 3912-A. § 1 of Act of 1911 H. B. No. 46, entitled:

AN ACT

To Regulate and Limit the Hours of Employment in All Under-Ground Mines, Under-Ground Workings, Open Cut workings, Open Pit Workings, Smelters, Reduction Works, Stamp Mills, Concentrating Mills, Chlorination Processes, Cyanide Processes and Works, Coke Ovens; to Declare Certain Employments Injurious to Health and Dangerous to Life and Limb; to Provide a Penalty for the Violation of the Provisions of This Act; to Repeal Chapter 119 of the Session Laws of 1905, Approved March 21, 1905, and All Other Acts and Parts of Acts in Conflict With This Act. (Approved June 2, 1911.)

3912-B. Eight hour law.

SEC. 12b. That the period of employment of men working in all under ground mines, under ground workings, open cut workings, open pit workings, smelters, reduction works, stamp mills, concentrating mills, chlorination processes, cyanide processes and coke ovens and shall not exceed eight (8) hours within any twenty-four (24) hours except in cases of emergency where life or property is in imminent danger.

Legislation. Sec. 3912-B. Sec. 2 of Act of 1911, cited under § 3912-A. Substitute for the latter part of § 3912 which declared the Eight-Hour Day for the employments enumerated.

3912-C. Misdemeanor—Punishment.

SEC. 13c. Any person, persons, body corporate, general manager or employer who shall violate or cause to be violated any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars (\$250) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not less than ninety (90) days nor more than six (6) months, or by both such fine and imprisonment. Every day's violation of the provisions of this act shall constitute a separate offense.

Legislation. Sec. 3912-C. Sec. 3 of Act of 1911, cited under § 3912-A. It was the penal section of the Act and becomes the substitute for § 3914. Sec. 3913 declared the practice in emergency cases which is not covered in the later Act.

3912-D. Repeal.

SEC. 14d. Chapter 119 of the session laws of 1905, approved March 21, 1905, and all other acts and parts of acts in conflict with this act are hereby repealed.

Legislation. Sec. 3912-D. Sec. 4 of Act of 1911, cited under § 3912-A. The Act repealed was §§ 3912-3914, §§ 1-3 of Act of 1905 p. 284 which before repeal and substitution, read:

Section 1. All labor of miners in underground mines, or other underground workings and labor directly attending blast furnaces, either in smelters or in ore reduction works, in directly attending stamp mills, chlorination and cyanide processes and directly attending smelting furnaces producing metal or matte, which labor is in contact with noxious fumes, gases or vapors, is hereby declared dangerous and injurious to health, life and limb; and the period of employment for all persons so employed in underground mines or other underground workings, attending blast furnaces either in smelters or in ore reduction works, in stamp mills, in chlorination and cyanide mills, and attending smelting furnaces producing metal or matte, shall be eight hours per day; except in cases of emergency, where life or property is in imminent danger.

Sec. 2. Every person, body corporate, agent, manager, superintendent, employer, president or directors shall, in every case of such emergency, make to the commissioner of bureau of labor statistics, within ten (10) days after the commencement of such emergency, a report, according to the form which may be prescribed by him, verified by the oath or affirmation of such person, employer, agent, man-

ager, superintendent, president or director; each report shall exhibit in detail the circumstances creating such emergency.

Sec. 3. Any violation of this act shall constitute a misdemeanor and be punished by a fine of not less than fifty dollars (\$50) nor exceeding three hundred dollars (\$300).

3915-3920. (Repealed.)

See not to § 3920-T.

3920-A. Employment of children under age of fourteen.

SEC. 19a. That no child under the age of fourteen years shall be employed, permitted or suffered to work at any gainful occupation in any theatre, concert hall or place of amusement where intoxicating liquors are sold, or in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, passenger or freight elevator, factory or workshop, or as a messenger or driver therefor, within this state. That no child under the age of fourteen years shall be employed at any work performed for wages or other compensation, to whomsoever payable, during any portion of any month when the public schools of the town, township, village or city in which he or she resides, are in session, nor be employed in any work before the hour of seven o'clock in the morning, or after the hour of eight o'clock in the evening; *Provided*, That no child shall be allowed to work more than eight hours in any one day.

The general assembly of the state of Colorado does hereby declare that all occupations or employments in which children are forbidden to engage by the provisions of this act shall be and are hereby declared to be injurious or dangerous to health, life or limb. The employments or occupations permitted under this act, under the sections hereof providing for exemptions shall be considered injurious or dangerous to health, life or limb, unless it shall appear from the evidence produced before the authorities permitted to grant such exemptions that, in their opinion, the injury or danger to health, life or limb has been removed; *Provided*, "Also that where conditions are such as to justify granting a permit exempting children from the provisions of this act to take parts in concerts and theatrical performances and where such permits have been granted the performances of such children shall be construed to be a part of their training and education."

Nothing in this act shall be construed to prevent the employment of children in any fruit orchard, garden, field or farm, *Provided*, That any child under fourteen years of age engaging in such employment for persons other than their own parents must first secure a permit from the superintendent of schools in accordance with the provisions of section fifteen of this act. The hours of work during each day, or in any week shall be in compliance with the provisions of this act as to the hours during any day or week when children may be employed.

Legislation. Sec. 3920-A. Sec. 1 of Act of 1911, H. B. No. 513, entitled:

AN ACT

To Regulate the Employment of Children, to Declare Certain Employments of Children Injurious and Dangerous to Health, Life and Limb, and to Provide for the Enforcement of This Act. [Approved May 30, 1911.]

The second paragraph of the text says that all occupations or employments enumerated are "Injurious or dangerous to health, life or limb." Among those enumerated are stores, offices and hotels. To what extent the legislative declaration of a selfevident falsity may be binding on the courts, is for the judiciary to decide.

CITATIONS.

The title of the act of 1903 was not broad enough to cover its section 3, which was held invalid as applied to laundries.—*Burcher v. Peo.*, 41 C. 497-503, 93 P. 15.

3920-B. Employing children under 16, where liquors are sold, etc.

SEC. 19b. It shall be unlawful for any person having the care, custody or control of any child under the age of sixteen years, or apparently under the age of sixteen years, to exhibit, use or employ such child as an actor or performer in any concert hall or room where intoxicating liquors are sold or given away, or in any variety theatre, or for any illegal, obscene, indecent or immoral purpose, exhibition or practice whatsoever, or for any business or in any place, situation or exhibition or vocation injurious to the morals or health, or dangerous to the life or limb of such child, or cause, procure or encourage such child to engage therein. Nothing in this section contained shall apply to or affect the employment or use of any such child as a singer or musician in any church, school or academy, or the teaching or learning the science

or practice of music, or in the physical development of its body in any respectable gymnasium or natatorium; *Provided*, That any child may be permitted to take part in any concert or any theatrical exhibition that is being given for profit with the written consent of the authority provided by this act for the granting of permits to children for exemptions from the provisions of this act.

Nothing in this act shall be construed to prevent children taking part in what are known as amateur entertainments or theatricals for charity or not for profit in schools, churches, settlement houses or boys' or girls' clubs.

Legislation. Sec. 3920-B. § 2 of Act of 1911, cited under § 3920-A.

3920-C. Employing children under 16 in mines or to operate machinery—Selling newspapers.

Sec. 19c. It shall be unlawful for any person, firm or corporation to take, receive, hire or employ any child or children under sixteen years of age in any underground works or mine, in or about the surface workings thereof, or in any smelter, coke oven or to adjust any belt to any machinery, or to operate or assist in operating circular or band saws, wood-shapers, wood-joiners, planers, sandpaper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood-turning or boring machinery, stamping machines in sheetmetal and tinware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, nor shall they be employed in operating any passenger or freight elevators, steam boiler, steam machinery or other steam generating apparatus, or automobiles, wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery punches or shears, washing, grinding or mixing mill or calendary rolls in rubber manufacturing, nor shall they operate or assist in operating laundry machinery, nor shall children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes; nor shall females under 16 years of age be employed in any

capacity whatsoever where such employment compels them to remain standing constantly. "No female child under ten years of age, shall sell or be permitted or allowed to sell or distribute any newspapers, periodicals or other publication or any article of merchandise or to engage in or carry on any other business or occupation in the streets or alleys of any town or city."

Legislation. Sec. 3920-C. § 3 of Act of 1911, cited under § 3920-A.

3920-D. Register kept of children employed.

SEC. 19d. It shall be the duty of every person, firm or corporation, agent or manager of any firm or corporation employing minors over 14 years and under 16 years of age in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, within this state, to keep a register in said mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, factory or workshop in which said minors shall be employed or permitted or suffered to work, in which register shall be recorded the name, age and place of residence of every child employed or suffered or permitted to work there, or as messenger or driver therefor, over the age of 14 and under the age of 16 years; and it shall be unlawful for any person, firm or corporation agent or manager of any firm or corporation to hire or employ, or permit or suffer to work in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, any child under the age of 16 years and over 14 years of age, unless there is first produced and placed on file in such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, factory or workshop, theatre, concert hall or place of amusement, an age and school certificate approved as hereinafter provided.

Legislation. Sec. 3920-D. § 4 of Act of 1911, cited under § 3920-A.

3920-E. List of children employed to be posted in work room.

SEC. 19e. Every person, firm or corporation, agent or manager of a corporation employing or permitting or suffering to work five or more children under the age of 16 years and over the age of 14 in any mercantile institution, store, office, laundry, hotel, manufacturing establishment, factory or workshop, shall post and keep posted in a conspicuous place in every room in which such help is employed, or permitted or suffered to work, a list containing the name, age and place of residence of every person under the age of 16 years employed, permitted or suffered to work in such room.

Legislation. Sec. 3920-E. § 5 of Act of 1911, cited under § 3920-A.

3920-F. Age and school certificate.

SEC. 19f. No child permitted to be employed under this act shall be employed in any mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theatre, concert hall, or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver therefor, unless there is first produced and placed on file in such mercantile institution, store, office, hotel, laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, factory or workshop, and accessible to the state factory inspector, assistant factory inspector or deputy factory inspector, an age and school certificate as hereinafter prescribed; and unless there is kept on file and produced on demand of said inspector of factories a complete and correct list of all the minors under the age of 16 years so employed who cannot read at sight and write legibly simple sentences, unless such child is attending night school as hereinafter provided.

Legislation. Sec. 3920-F. § 6 of Act of 1911, cited under § 3920-A.

3920-G. Age and school certificate—How approved.

SEC. 19g. An age and school certificate shall be approved only by the superintendent of schools, or by a person authorized by him in writing; or where there is no superintendent of schools, by a person authorized by the school board; *Provided*, That the

superintendent or principal of a parochial school shall have the right to approve an age and school certificate, and shall have the same rights and powers as the superintendent of public schools to administer the oaths herein provided for children attending parochial schools; *Provided, further*, That no member of a school board or other person authorized as aforesaid shall have authority to approve such certificates for any child then in or about to enter his own establishment, or the employment of a firm or corporation of which he is a member, officer or employe. The person approving these certificates shall have the authority to administer the oath provided herein, but no fee shall be charged therefor. It shall be the duty of the school board or local school authorities to designate a place (connected with their office, when practicable) where certificates shall be issued and recorded, and to establish and maintain the necessary records and clerical service for carrying out the provisions of this act.

Legislation. Sec. 3920-G. § 7 of Act of 1911, cited under § 3920-A.

3920-H. Proof of age.

Sec. 19h. An age and school certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the register of birth of such child with a town or city clerk, or by the records of the public or parochial schools, that such child is of the age stated in the certificate; *Provided*, That in cases arising wherein the above proof is not obtainable, the parent or guardian of the child shall make oath before the juvenile or county court or any officer thereof as to the age of such child, and the court may issue to said child an age certificate as sworn to.

Legislation. Sec. 3920-H. § 8 of Act of 1911, cited under § 3920-A.

3920-J. Employment ticket.

Sec. 19j. The age and school certificate of a child under 16 years of age shall not be approved and signed until he presents to the person authorized to approve and sign the same a school attendance certificate, as hereinafter prescribed, duly filled out and signed. A duplicate of such age and school certificate shall

be filled out and shall be forwarded to the state factory inspector's office. Any explanatory matter may be printed with such certificate, in the discretion of the school board or superintendent of schools. The employment and the age and school certificates shall be separately printed and shall be filled out, signed and held or surrendered as indicated in the following forms:

SCHOOL CERTIFICATE.

(Name of school.)

(City or town and date.)

This certifies (name of minor) of the....th grade, can read and write legibly simple sentences. This also certifies that according to the records of this school, and in my belief, the said (name of minor) was born at (name of city or town), in (name of county), on the (date) and is now (number of years and months) old.

(Name of parent or guardian.)

(Residence.)

(Signature of teacher)grade.

(Name of principal.)

EVENING SCHOOL ATTENDANCE CERTIFICATE.

(Date.)

This certifies that (name of minor) is registered in and regularly attends the.....evening school. This also certifies that according to the records of my school and in my belief the said (name of minor) was born at (name of city or town), on the.....day of (year), and is now (number of years and months) old.

(Name of parent or guardian.)

(Residence.)

(Signature of teacher.)

(Signature of principal.)

AGE AND SCHOOL CERTIFICATE.

This certifies that I am (father, mother, guardian or custodian) of (name of minor), and that (he or she) was born at

(name of town or city), in the (name of county, if known) and state and county of....., on the (day of birth and year of birth) and is now (number of years and months) old.

(Signature of parent, guardian or custodian.)
(City or town and date.)

There personally appeared before me the above named (name of person signing) and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge. I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight....., complexion (fair or dark), hair (color), having no sufficient reason to doubt that (he or she) is of the age therein certified.

OWNER OF CERTIFICATE.

This certificate belongs to (name of child in whose favor it is drawn) and is to be surrendered to (him or her) whenever (he or she) leaves the service of the corporation or employer holding the same; but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools, or where there is no superintendent of schools, to the school board. (Signature of person authorized to approve and sign, with official character authority) (town or city and date.)

ILLITERACY.

In the case of a child who cannot read at sight and write legibly, simple sentences, the certificate shall continue as follows, after the word sentences: "I hereby certify that (he or she) is regularly attending the (name of public or parochial evening school)." This certificate shall continue in force just as long as the regular attendance of said child at said evening school is certified weekly by the teacher and principal of said school.

EVENING SCHOOL.

In any city or town in which there is no public or parochial evening school, an age and school certificate shall not be approved for a child under the age of 16 years who cannot read at sight

and write legibly simple sentences, the certificate of the principal of a public or parochial school shall be prima facie evidence as to the literacy or illiteracy of the child. .

Legislation. Sec. 3920-J. § 9 of Act of 1911, cited under § 3920-A.

3920-K. Schooling required.

SEC. 19k. No person shall employ any minor over 14 years of age and under 16 years, and no parent, guardian or custodian shall permit to be employed any such minor under his control who cannot read at sight and write legibly simple sentences, while a public evening school is maintained in the town or city in which such minor resides, unless such minor is a regular attendant at such evening school.

Legislation. Sec. 3920-K. § 10 of Act of 1911, cited under § 3920-A.

3920-L. Duties of state inspectors of factories.

SEC. 19l. The state inspector of factories, his assistants or deputies, shall visit all mercantile institutions, stores, offices, laundries, manufacturing establishments, bowling alleys, theatres, concert halls or places of amusement, factories or workshops, and all other places where minors are or may be employed in this state, and ascertain whether any minors are employed contrary to the provisions of this act. Inspectors of factories may require that age and school certificates, and all lists of minors employed in such factories, workshops, mercantile institutions and all other places where minors are employed as provided for in this act, shall be produced for their inspection on demand. *And, provided, further,* That upon written complaint to the school board or local school authorities of any city, town, district or municipality, that any minor (whose name shall be given in such complaint) is employed in any mercantile institution, store, office, laundry, manufacturing establishment, bowling alley, theatre, concert hall or place of amusement, passenger or freight elevator, factory or workshop, or as messenger or driver thereof, contrary to the provisions of this act, it shall be the duty of such school board or local school authority to report the same to the state inspector of factories.

Legislation. Sec. 3920-L. § 11 of Act of 1911, cited under § 3920-A.

3920-M. Hours of labor.

SEC. 19m. No person under the age of 16 years shall be employed or suffered or permitted to work at any gainful occupation more than forty-eight hours in any one week, nor more than eight hours in any one day; or after the hour of 8:00 o'clock in the evening. Every employer shall post in a conspicuous place in every room where such minors are employed, a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work, and the hours when the time or times allowed for dinner or for other meals begins and ends. The printed form of such notice shall be furnished by the state inspector of factories, and the employment of any such minor for longer time in any one day so stated shall be deemed a violation of this section.

Legislation. Sec. 3920-M. § 12 of Act of 1911, cited under § 3920-A.

3920-N. Prima facie evidence of a child's employment.

SEC. 19n. The presence of any person under the age of 16 years in any manufacturing establishment, factory or workshop shall constitute prima facie evidence of his or her employment therein.

Legislation. Sec. 3920-N. § 13 of Act of 1911, cited under § 3920-A.

3920-O. Enforcement of the provisions of this act.

SEC. 19o. It shall be the special duty of the state factory inspector to enforce the provisions of this act and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in this state. It shall be the duty of the state factory inspector, assistant state factory inspector and deputy state factory inspectors, under the supervision and direction of the state factory inspector, and they are hereby authorized and empowered to visit and inspect, at all reasonable times, and as often as possible, all places covered by this act;

Provided, That this act shall not be construed to repeal any law of this state imposing duties or responsibilities upon any other

officer or person to make inspections or bring prosecutions for the violation of any school law or any other law of this state for the protection of children.

Legislation. Sec. 3920-O. § 14 of Act of 1911, cited under § 3920-A.

3920-P. Exemptions—Theatrical performances—Procedure— Summer months.

SEC. 19p. Any child may be exempted from the provisions of this act concerning employment of children in any concert or theatrical exhibition or performance in any place where intoxicating liquors are not sold, and between the ages of fourteen and sixteen, from any other provisions of this act, except the provisions of section three (3), on the following conditions: Any such child, its parents or person seeking to employ such child, shall file an application in writing with the city superintendent of schools—if there be any such city superintendent of schools—and if not, then with the county superintendent of schools, or any person deputized by them to receive and act upon such applications, stating his or her age, residence, address, school attendance, grade, names of parent, parents or guardian, and in detail the nature of employment sought, the number and character of the performances, the kind of work required and the name of the employer and such facts as may be required to enable such person to pass intelligently upon such application. Within not less than 48 hours of the filing of such application, it shall be the duty of such officer to hear and determine such application, and if the same shall be granted, such officer granting the same, shall issue a written permit to such child, stating therein his reasons for such permit. If such application is refused the child or the person making same for the child shall be entitled upon demand, within 24 hours after such refusal, to be furnished with a written statement of the reasons of such officer for refusing to issue such permit. An appeal may be taken from the decision of such officer so passing upon such application to the county or juvenile court of the county in which such application is made, upon such child, its parent or guardian or any person interested in the protection of such child filing a brief written petition with the clerk of said court, with a copy of such refusal to grant such permit; *Provided*,

Such appeal is taken within ten days after the refusal to issue such permit. No fee shall be charged for any such application or on account of any such appeal. No permit shall be granted under the provisions of this section to any child to be employed in any concert or theatrical exhibition or performance unless it shall be made to appear that suitable provisions have been made by the employer of such child for the protection of the moral and physical health and the education of such child. The person passing upon such application or any court before whom such matter may be brought for final determination may, as a condition to granting such permit, make such reasonable terms and conditions as shall seem necessary and proper for safeguarding the moral and physical health of such child and giving it such educational advantages as may seem to be for its best interests. And it shall be lawful to attach as a condition to any such permit mentioned in this section a written promise of the employer of such child to comply with the terms thereof, and a bond or undertaking to the people of the state of Colorado in a penal sum to be fixed by the court, not exceeding \$2,000 with one or more sureties, may be required by the court of such employer conditioned that he will faithfully carry out the terms and conditions upon which such permit may be granted. "Permits or copies certified to as correct by the authorities issuing the same granting exemptions from this act for children to appear in any concert or theatrical performance shall be kept on file at the box office of concert halls or theatre in which any such child may appear under such permits. All such permits shall be subject to inspection by the humane society and probation officers and factory inspectors." Any person may apply to the county or juvenile court to have the exemption permitted by this act revoked by such court by filing with the clerk of the court a short petition setting up the facts showing that the conditions of the permit granting such exemption have been violated, or that it is not for the best interest of such child to have such permit or exemption. Whereupon, the court shall issue a summons or notice to such child and to at least one of its parents or guardian, if there be such parent or guardian in the county, requiring them to appear before such court within not less than forty-eight hours to show cause why the prayer of such petition

should not be granted or such permit or exemption should not be revoked. "During that part of the months of June, July and August when the public schools are not in regular session, children over twelve years of age shall be entitled to exemptions from the provisions of this act, permitted by section fifteen, upon complying with the conditions and receiving the permit provided for in said section."

Legislation. Sec. 3920-P. § 15 of Act of 1911, cited under § 3920-A.

3920-Q. Penalties.

SEC. 19q. Whoever, having under his control a child under the age of 16 years, permits such child to be employed in violation of the provisions of this act, shall for each offense be fined not less than \$5.00 nor more than \$25.00, and shall stand committed until such fine and costs are paid. A failure to produce to the inspector of factories, his assistants or deputies, any age and school certificates or list required by this act, shall constitute a violation of this act, and the person so failing shall, upon conviction, be fined not less than \$5.00 nor more than \$50.00 for each offense. Every person authorized to sign the certificate prescribed by section 7 of this act, who certifies to any materially false statement therein, shall be guilty of a violation of this act and upon conviction be fined not less than \$5.00 nor more than \$100 for each offense, and shall stand committed until such fine and costs are paid. Any person, firm or corporation, agent or manager, superintendent or foreman of any firm or corporation, whether for himself or for such firm or corporation, or by himself or through sub-agents or foreman, superintendent or manager, who shall violate or fail to comply with any of the provisions of this act, or shall refuse admittance to premises, or otherwise obstruct the factory inspector, assistant factory inspector or deputy factory inspector in the performance of their duties, as prescribed by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$5.00 nor more than \$100 for each offense, and shall stand committed until such fine and costs are paid.

It is the intention and purpose of this act to extend personal responsibility to the president and general manager of any corpo-

ration for violation of this act by any foreman, superintendent or sub-manager or sub-agent.

Legislation. Sec. 3920-Q. § 16 of Act of 1911, cited under § 3920-A.

3920-R. Second violation.

SEC. 19r. Any person, agent, firm or corporation who shall be convicted of a second violation of any provision of this act, shall be fined in a sum not less than one hundred dollars (\$100), or more than five hundred dollars (\$500), or be imprisoned in the county jail for not to exceed 90 days or by both such fine and imprisonment, in the discretion of the court.

Legislation. Sec. 3920-R. § 17 of Act of 1911, cited under § 3920-A.

3920-S. Saving clause.

SEC. 19s. Nothing in this act shall be held in any manner to affect any indictment, trial, writ of error, appeal or other proceeding, judgment or sentence in any case now pending or which may be now filed in any court of this state, for the violation of any act or section thereof which may be held to be repealed by this act, but the same shall be held, construed and adjudged as provided by the law enforced before this act shall take effect, and any offense under the provisions of any act in any section thereof, which may be construed to be repealed by this act, which shall have been committed before this act takes effect, shall be inquired of, prosecuted and punished in accordance with the law in force at the time of the commission of such offense.

Legislation. Sec. 3920-S. § 18 of Act of 1911, cited under § 3920-A.

3920-T. Repeal.

SEC. 19t. This act shall not be construed to repeal any part of an act to compel the elementary education of children in school districts of the first and second class, as approved April 12, 1899, and as amended and approved March 7, 1903.

An act to prescribe and regulate the hours of employment for women and children in mills, factories, manufacturing establishments, shops, stores, and any other occupation which may be

deemed unhealthful and dangerous, approved April 11, 1903, and any other act concerning or regulating child labor in this state which may conflict with this act, is hereby repealed.

Nothing in this act shall be construed to repeal any act or law of this state concerning the dependency or delinquency of children or persons causing, encouraging or contributing thereto.

Legislation. Sec. 3920-T. § 19 of Act of 1911, cited under § 3920-A.

The Acts first mentioned in the text are now §§ 530-540, and the Act repealed was §§ 3915-3920, which were §§ 1-6 of Act of 1903 p. 309.

This 1903 Act, the title of which is recited in the text and which it repeals (§§ 3915-3920) was confined to

(1) Making an eighthour day for children employed in any mill, factory, manufacturing establishment, shop, store or mine. § 3915.

(2) Sec. 15. All paper mills, cotton mills and factories where wearing apparel for men or women is made, ore reduction mills or smelters, factories, shops of all kinds and stores may be held to be unhealthful and dangerous occupations within the meaning of this Act at the discretion of the court. § 3916.

(3) No woman of 16 years of age or over could be employed more than eight hours where the work required her to keep on her feet. § 3917.

(4) Provided a penalty for hiring to work, any child under 14 in any mine, smelter, mill or factory. § 3918.

(5) Provided a penalty for any violation of the Act. § 3919.

(6) A perfunctory section requiring District Attorneys to prosecute violators. § 3920.

The text of the Act of 1911 greatly enlarges upon these provisions adding useless and onerous details for the enforcement of its terms. The central idea of the Act seems to be that education will preserve the morals and health of the child, without the necessity of food or clothing, which when the child is homeless and destitute, can be provided only by its labor.

For employment of children see Secs. 547-551.

Children or women not to be employed in coal mines. § 642.

3921. Eight hour labor day for public employes.

SRC. 20. In all work hereafter undertaken in behalf of the state or any county, township, school district, municipality or incorporated town, it shall be unlawful for any board, officer, agent or any contractor or sub-contractor thereof to employ any mechanic, workingman or laborer in the prosecution of any such work for more than eight hours a day.

Legislation. Sec. 3921. Act 1894 p. 85 § 1, amending § 1 Act 1893 p. 305 § 1, which read:

Section 1. In all work hereafter undertaken in behalf of the state, or any county, township, school district, municipality or incorporated town, no mechanic, workingman or laborer, shall be employed more than eight hours a day; and it shall be unlawful for any board, officer, agent, or any contractor or sub-contractor thereof, to employ any mechanic,

workingman or laborer, in the prosecution of any such work,
more than eight hours a day.

CITATIONS.

Secs. 3921-3923 can not be upheld as the exercise of the sovereign police power. They are a valid exercise of the state's proprietary power to properly prescribe the terms and conditions upon which work of a public character may be done.—*Keefe v. Peo.*, 37 C. 319, 87 P. 791.

3922. Emergency cases.

SEC. 21. Nothing in section one of this act shall be construed so as to prevent work in excess of eight hours a day in emergency cases; *Provided*, That hours in excess of eight a day shall be treated as constituting part of a subsequent day's work; *And, provided*, That in no one week of seven days shall there be permitted more than forty-eight hours of labor. Any violation hereof shall be unlawful.

[Section 1 referred to is section 3922.]

Legislation. Sec. 3922. Act 1894 p. 85 § 2, amending § 2 Act 1893, cited under § 3921. The substituted section read:

Sec. 2. Nothing in section one of this Act shall be construed so as to prevent work in excess of eight hours a day in emergency cases. *Provided*, that hours in excess of eight a day shall be treated as constituting part of a subsequent day's work; and, *Provided*, that in no one week, of seven days shall there be permitted more than fifty-six hours of labor. Any violation hereof shall be unlawful.

3923. Penalty for violation of two preceding sections.

SEC. 22. Any employer, board, officer or contractor who shall violate the provisions of sections 1 or 2 of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not less than one hundred (100) dollars nor more than five hundred (500) dollars or by imprisonment in the county jail not more than one hundred (100) days or by both fine and imprisonment, at the discretion of the court.

[Section 1 referred to is section 3921.]

[Section 2 referred to is section 3922.]

Legislation. Sec. 3923. Act 1894 p. 85 § 3, amending § 3 Act 1893 p. 305, cited under § 3921. The first line of the amended section read:

"Any person, board, officer or person employed who shall violate."
The balance of the amended section read same as the text.

3924. Combination of employees for peaceable objects lawful.

SEC. 23. It shall not be unlawful for any two or more persons to unite, or combine, or agree in any manner, to advise or encourage, by peaceable means, any person or persons to enter into any combination in relation to entering into or remaining in the employment of any person, persons or corporation, or in relation to the amount of wages or compensation to be paid for labor, or for the purpose of regulating the hours of labor, or for the purpose of procuring of fair and just treatment from employes, or for the purpose of aiding and protecting their welfare and interests in any other manner not in violation of the constitution of this state or the laws made in pursuance thereof; *Provided*, That this act shall not be so construed as to permit two or more persons, by threats of either bodily or financial injury, or by any display of force, to prevent or intimidate any other person from continuing in such employment as he may see fit, or to boycott or intimidate any employer of labor.

[See Blacklisting and Boycotting, Chapter 15.]

Legislation. Sec. 3924. § 1 of Act of 1889 p. 92, entitled, "An Act concerning conspiracy."

3925. Coercion of employees to prevent joining labor unions unlawful.

SEC. 24. That it shall be unlawful for any individual, company or corporation or any member of any firm, or agent, officer or employe of any company or corporation, to prevent employes from forming, joining or belonging to any lawful labor organization, union, society or political party, or to coerce or attempt to coerce employes by discharging or threatening to discharge them from their employ or the employ of any firm, company or corporation, because of their connection with such lawful labor organization, union, society or political party.

Legislation. Sec. 3925. Act 1897 p. 156 § 1, entitled:

AN ACT

To Protect Employes and Guarantee Their Right to Belong to Lawful Labor Organizations, Unions, Societies or Political Parties; and to Provide a Penalty for Violation Thereof.

3926. Penalty for coercing employees.

SEC. 25. Any person or any member of any firm, or agent, officer or employe of any such company or corporation, violating the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars or imprisoned for a period not less than six months nor more than one year, or both, in the discretion of the court.

[Section 1 referred to is section 3925.]

[For blacklisting and boycotting see sections 396-402.]

Legislation. Sec. 3926. Act 1897 § 2, cited under § 3925.

3927. Age of employe not ground for discharge.

SEC. 26. That no person, persons, firm, association or corporation, carrying on or conducting, within this state, any business requiring the employment of labor, shall discharge any individual between the ages of eighteen and sixty years, solely and only upon the ground of age; *Provided, however,* That such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience, to satisfactorily perform and does satisfactorily perform the labor assigned to him, or for which he applies.

Legislation. Sec. 3927. Act 1903 p. 307 § 1, entitled:

AN ACT

In Relation to the Discharge of, or Refusal to Employ Individuals Between the Ages of Eighteen and Sixty Years, and Providing a Penalty for the Penalties for Violating This Act. (Approved March 27, 1911.)

3928. Penalty for violation of preceding section.

SEC. 27. Any person, persons, firm, association or corporation, or officer, agent or representative of such corporation, who violates, or permits to be violated, any of the provisions of the preceding section, upon conviction thereof, shall be fined not less than one hundred dollars, nor more than two hundred and fifty dollars, for each and every violation of this act.

Legislation. Sec. 3928. Act 1903 § 2, cited under § 3927.

3928-A. Unlawful to prohibit employee from joining societies.

SEC. 27a. It shall be unlawful for any corporation, company, partnership, association, individual or any employer of labor to demand as a condition of employment, or as a condition of continuing any employment, any contract, agreement or reservation, evidenced by writing or otherwise, or by condition reserved in any contract, that the person or persons so employed shall sever any present connection with or shall refrain from joining any lawful organization or society, or under any pretense whatever to prohibit, limit or restrain such employee from exercising his social, financial, fraternal or business rights in connection with or through any lawful organization or society, during his employment by any employer.

Legislation. Sec. 3928-A. § 1 of Act of 1911 S. B. No. 120, entitled:

AN ACT

To Prohibit Any Employer From Demanding of Any Employee as a Condition of Securing Employment or Remaining Employed, That Such Employee Sever His Connection With or Be Prohibited From Joining Any Lawful Organization or Society, to Interpret This Act and to Provide Penalties for Violating this Act. (Approved March 27, 1911.)

3928-B. Idem—Contract prima facie evidence.

SEC. 27b. Any such contract, agreement or reservation or condition reserved shall be prima facie evidence of the violation of this act.

Legislation. Sec. 3928-B. § 2 of Act of 1911, cited under § 3928-A.

3928-C. Violation a misdemeanor—Penalty.

SEC. 27c. That any corporation, company, partnership, association, individual or any employer of labor, which or who shall violate any provision of this act, shall be deemed guilty of a misdemeanor, and as to any corporation such guilt shall extend to all the officers, directors or trustees thereof and any agent or authority by which such corporation acts, as individuals, and as to any partnership or company, all persons composing the same as individuals, and as to any person the person and his agent shall be guilty as individuals, and upon conviction of any person or per-

sons under the provisions of this act, such person or persons shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each and every repetition of such offense or by imprisonment of not less than ninety days nor more than six months in the county jail for the county in which such offense was committed, or by both such fine and imprisonment in the discretion of the court.

Legislation. Sec. 3928-C. Sec. 3 of Act of 1911, cited under § 3928-A. Sec. 4 was the Emergency Clause.
See Chap. 15, Blacklisting and Boycotting.

3928-D. Enticing workmen to quit by false statements.

SEC. 27d. That it shall be unlawful for any person, persons, company, corporation, society, association or organization of any kind doing business in this state, by himself, themselves, his, its or their agents or attorneys, to induce, influence, persuade or engage workmen to change from one place to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through or by means of false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or as to the existence or non-existence of a strike, or lockout pending between employer and employes, or failure to state in any advertisement, proposal or contract for the employment of workmen that there is a strike; lockout or other labor troubles at the place of the proposed employment, when, in fact such strike, lockout or other labor troubles then actually exist at such place, shall be deemed as false advertisement and misrepresentation for the purposes of this act.

Legislation. Sec. 3928-D. § 1 of Act of 1911 S. B. No. 122, entitled:

AN ACT

Prohibiting the Use of Deception, Misrepresentation, False Advertising and False Pretenses and Unlawful Force in the Procuring of Employees to Work in Any Department of Labor in This State and Fixing Penalties, Criminal and Civil, for Violation Thereof. [Approved April 3, 1911.]

3928-E. Punishment.

Sec. 27e. Any person or persons, company, corporation, society, association or organization of any kind doing business in this state, as well as his, their or its agents, attorneys, servants or associates, found guilty of violating section 1 of this act, or any part thereof, shall be fined not exceeding \$2,000, or confined in the county jail not exceeding one year, or both, where the defendant or defendants is or are a natural person or persons.

Legislation. Sec. 3928-E. § 2 of Act of 1911, cited under § 3928-D.

3928-F. Use of deadly weapons—Right to guard premises.

Sec. 27f. Any person or persons who shall hire, aid, abet or assist in hiring, through agencies or otherwise, persons to guard with arms or deadly weapons of any kind other persons or property in this state, or any person or persons who shall come into this state armed with deadly weapons of any kind for any such purpose, without a permit in writing from the governor of this state, shall be guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary not less than one year nor more than five years; *Provided*, That nothing contained in this act shall be construed to interfere with the right of any person, persons, or company, corporation, society, association or organization in guarding or protecting their private property or private interest, as is now provided by law; but this act shall be construed only to apply in cases where workmen are brought into this state, or induced to go from one place to another in this state, by any false pretenses, false advertising or deceptive representations, or brought into this state under arms, or removed from one place to another in this state, under arms.

Legislation. Sec. 3928-F. Sec. 3 of Act of 1911, cited under § 3928-D.

3928-G. Action for damages and attorneys' fees.

Sec. 27g. Any workman of this state, or any workman of another state who has or shall be influenced, induced or persuaded to engage with any persons mentioned in section 1 of this act, through or by means of any of the things therein prohibited, each

of such workmen shall have a right of action for recovery of all damages that each such workmen has sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce him to change his place of employment, against any person or persons, corporations, companies or associations, directly or indirectly, causing such damages; and, in addition to all actual damages such workmen may have sustained, shall be entitled to recover such reasonable attorney's fees as the court shall fix, to be taxed as costs in any judgment recovered.

Legislation. Sec. 3928-G. § 4 of Act of 1911, cited under § 3928-D.
Sec. 5 was the General Repealing Section.
See Chap. 15, Blacklisting and Boycotting.

3929. Employers provide seats for female employees.

SEC. 28. Every person, corporation or company employing females in any manufacturing, mechanical or mercantile establishments in this state, shall provide suitable seats for the use of the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

Legislation. Sec. 3929. Act 1885 p. 297 § 1, entitled:

AN ACT

**For the Preservation of the Health of Females Employed in Manufacturing,
Mechanical and Mercantile Establishments.**

3930. Penalty for violation of preceding section.

SEC. 29. Any person, corporation or company violating any of the provisions of this act, shall be punished by fine of not less than ten dollars nor more than thirty dollars for each offense.

[Provisions of act referred to comprise sections 3929 and 3930.]
[Street railroads must provide vestibules. Sections 5439-5441.]

Legislation. Sec. 3930. Act 1885 § 2, cited under § 3929.

3930-A. Bond to protect employes and materialmen on railroads, reservoirs and ditches.

SEC. 29a. That whenever any railroad, reservoir or irrigat-

ing canal company shall contract with any person, persons or corporation for the construction of its railroad, reservoir or irrigating canal or any part thereof, such company shall take from the person, persons, or corporation with whom such contract is made, a good and sufficient bond, conditioned that such contractor or contractors shall pay or cause to be paid all laborers, mechanics, material men, ranchmen, farmers, merchants and other persons who supply such contractor or contractors, or any of his or their sub-contractors, with labor, work, material, ranch or farm products, provisions, goods or supplies of any kind, all just debts incurred therefor in carrying on such work, which bond shall be filed by such company in the office of the county clerk and recorder in the county where the principal work of such contractor shall be liable to the persons herein mentioned to the full extent ing canal company shall fail to take such bond, such company shall be carried on; and if any such railroad, reservoir or irrigating of all such debts so contracted by such contractor, or contractors, or any of his or their sub-contractors.

Any such contractor or contractors may take a similar bond from each of his or their sub-contractors to secure the payment of all debts of the kind above mentioned, incurred by him, and file the same as above provided. All such persons mentioned in this section to whom any debt of the kind above mentioned shall be due from any such contractor or sub-contractor shall severally have a right of action upon any such bond covering such debt taken as herein provided for the recovery of the full amount of such debt, and a certified copy of the bond shall be received as evidence in any such action.

Provided, however, That in order that the right of action upon such bonds may exist, such person or parties herein granted such right shall comply with either of the following conditions, to wit: First, an action in a court of competent jurisdiction in the county where such bond is filed shall be commenced within ninety days after the last item of indebtedness shall have accrued; or, second, an itemized statement of the indebtedness duly verified shall within ninety days after the last item of such indebtedness shall have accrued be filed in the office of the county clerk of the proper county; and an action shall be brought in any court

of competent jurisdiction of such county within three months after the filing of such statement. In case an action is commenced upon the bond of a contractor, such contractor may give notice thereof to the sub-contractor thereof liable for the claim, and in such case the result of such action shall be binding upon the sub-contractor, and his sureties, and in any case when a contractor has paid a claim for which a sub-contractor is liable, such contractor shall bring action against the sub-contractor and his sureties within sixty days after the payment of such claim.

Legislation. Sec. 3930-A. § 1 of Act of 1911 S. B. 183, entitled:

AN. ACT

To Protect Laborers, Mechanics, Ranchmen, Farmers, Merchants and Other Persons, Furnishing Work or Labor, Material, Ranch or Farm Products, Provisions, Goods or Supplies to Contractors or Sub-Contractors in the Construction of Railroads, Reservoirs and Irrigation Canals. (Approved May 29, 1911.)

This Act is entirely new. It seems to be cumulative to the "mechanics lien Act" which already protects the parties intended to be benefited, to the extent of the value of the railroad, canal or reservoir.

It now makes the owner of the property a personal guarantor to the material men and workmen unless the owner procures the bond called for. It suggests attack as in violation of the bill of rights both as to its being class legislation and as an interference with the right to contract. Const. Art II. Sec. 3.

3930-B. Retention of pay by owner.

SEC. 29b. Every laborer, mechanic, ranchman, farmer, merchant or other person performing any work or labor or furnishing any material, ranch or farm products, provisions, goods or supplies to any contractor or sub-contractor, in the construction of any railroad, reservoir or irrigating canal, or any part thereof, used by such contractor or sub-contractor in carrying on said work of construction whose demand for work, labor, material, ranch or farm products, provisions, goods or supplies so furnished has not been paid, may deliver to the company owning such railroad, reservoir or irrigating canal or to its agent, a verified account of the amount and value of the work and labor so performed or the material, ranch or farm products, provisions, goods or supplies so furnished, and thereupon such company, or its agent, shall retain out of the subsequent payments to the contractor or contractors

the amount of such unpaid account for the benefit of the person to whom the same is due.

Legislation. Sec. 3930-B. Sec. 2 of Act of 1911, cited under § 3930-A.

3930-C. Procedure to protect claimant.

SEC. 29c. Whenever any verified account mentioned in the last preceding section shall be placed in the hands of any railroad, reservoir or irrigating canal company or its agent as above stated, it shall be the duty of such company to furnish the contractor with a copy of such verified account, so that if there be any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted, and if the contractor or subcontractor, if he be the debtor, shall not, within ten days after the receipt of such amount, give the same railroad, reservoir or irrigating canal company or its agent, written notice that the claim is disputed, he shall be considered as assenting to its payment and the railroad, reservoir or irrigating canal company or its agent, shall be justified in paying the same when due and charging the same to the contractor. The person or persons to whom any such debt is due and who shall deliver a verified account thereof as above provided may recover the amount thereof in an action at law, to the extent of any balance due by the railroad, reservoir or irrigating canal company to the contractor at or after the time of delivering the verified account. *Provided,* That nothing contained in this section or in section 2 of this act shall interfere with the right of action upon the bond or bonds provided for in section 1, or against the railroad, reservoir or irrigating canal company for the full amount of any such debt in case of a failure of the company to take a bond.

Legislation. Sec. 3930-C. Sec. 3 of Act of 1911, cited under § 3930-A.

CHAPTER LXXX.

LEGAL NOTICES AND ADVERTISEMENTS.

Section.

- 3931. In what papers legal notices may be published.
 - 3932. Daily newspaper defined.
 - 3933. Affidavit of publishers.
 - 3934. Fees for legal advertising.
 - 3935. Legal advertisement defined.
 - 3936. Selection of newspaper for official notices.
 - 3937. Construction of act.
 - 3938. Secretary of state advertise for bids.
 - 3939. Bids shall be sealed.
 - 3940. Opening of bids—Contract let.
-

3931. In what papers legal notices may be published.

SECTION 1. No legal notice, advertisement or publication of any kind required or provided by the laws of the state of Colorado, to be published in a newspaper shall be published or have any force or effect as such unless the same be published in a newspaper printed in whole or in part, and published in the county in which such notice or advertisement is required to be printed, having a general circulation therein, and which said newspaper, if published weekly, has been continuously and uninterruptedly published in said county during a period of twenty-six consecutive weeks prior to the first publication of said notice or advertisement and, if published daily, has been so published as a daily paper in said county during a period of three consecutive months prior to the first publication of said notice or advertisement; *Provided*, That nothing in this act shall invalidate the publication of such notice or advertisement in any newspaper which has simply changed its name or changed the place of publication from one part of the county to another part thereof, without breaking the continuity of its regular issues for the required length of time;

And, provided, further, That this act shall not apply to counties in which no newspaper has been published for the required length of time.

Provided, also, That in towns and cities where no newspaper has been published for the required length of time, the provisions of this act shall apply only to the publications of proposed constitutional amendments and all notices and advertisements provided for by the election laws of the state.

Legislation. Sec. 3931. Act 1897 p. 177 § 1, entitled:

AN ACT

To Regulate the Printing of Legal Notices and Advertisements.

CITATIONS.

An objection that the affidavit of publication does not show that the paper has been published the requisite length of time is insufficient, unless the objection shows that a paper has been published in the county for the specified time.—*Donald v. Bradt*, 15 A. 418, 62 P. 582.

3932. Daily newspaper, defined.

SEC. 2. Every newspaper published daily, or on any six days of every week, inclusive or exclusive of Sunday, excepting legal holidays, shall be considered a daily newspaper and as such will be entitled to publish legal notices and any other matter required to be published in a daily newspaper; *Provided*, Such paper has been published for six consecutive months.

Legislation. Sec. 3932. Act 1909 p. 449 § 1, amending § 3932, which was § 1 of Act of 1907 p. 505, entitled:

AN ACT

Defining a Daily Newspaper.

The Act before amendment read:

Section 1. Every newspaper published daily or every day excepting Sundays and legal holidays shall be considered a daily newspaper and as such will be entitled to publish legal notices and any other matter required to be published in a daily newspaper. *Provided* the same has been published for six consecutive months.

3933. Affidavits of publishers.

SEC. 3. Every affidavit of the publisher of any such legal

notice, advertisement or publication shall in addition to the other matters required to be set forth therein by law, state that the newspaper in which such legal notice, advertisement or publication shall have been made, has been established for the length of time required, and is a newspaper within the meaning of this act.

[Form of publisher's affidavit of publication of tax sale notice. Section 5709.]

Legislation. Sec. 3933. Act 1897 p. 178 § 2, cited under § 3931.

CITATIONS.

An objection that the affidavit of publication does not show that the paper has been published the requisite length of time is insufficient, unless the objection shows that a paper has been published in the county for the specified time.—*Donald v. Bradt*, 15 A. 418, 62 P. 582.

3934. Fees for legal advertising.

SEC. 4. Publishers of newspapers in this state shall be entitled to receive the following fees: For the publication of all legal advertising in newspapers required to be done by law in this state, publishers shall be paid at the rate of seven cents for each line of nonpareil, measure thirteen ems (pica) wide, for the first insertion, and four cents for each subsequent insertion. In ascertaining charges under the provisions of this act, twelve lines shall be counted to the inch, and all emblems, display headings, rule work and necessary blank space shall be paid for as if solid type. And any public or municipal officer or board created by or existing under the laws of this state that has now, or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements, is hereby authorized, subject to other limitations on said authority, now imposed by law, to agree to pay therefor prices not exceeding said rates.

Legislation. Sec. 3934. Act 1901 p. 179 § 1, amending G. S. § 1423. Act 1877, G. L. § 1168.

CITATIONS.

This section cited in holding that a certain contract for the publication of constitutional amendments was contrary to public policy.—*Russell v. Courier P. & P. Co.*, 43 C. 327, 95 P. 938.

This section does not apply to the publication of the list of

CITATIONS CONTINUED.

nominations under the election law.. Legal advertisement or notice is such as is the outgrowth of proceedings in court.—*Pitkin County v. Price*, 10 A. 520, 51 P. 1012. *Las Animas County v. Stone*, 11 A. 478, 53 P. 616.

3935. Legal advertisement defined.

SEC. 5. That any notice required to be published in a newspaper by any law of this state, the ordinances of any city or town, or the order of any court, shall be held to be a legal advertisement within the meaning of section 1423, chapter 38, of the General Statutes of the state of Colorado; *Provided, however*, That any contract providing for payment for such notice at a lesser sum than is provided in said act 1423 shall be valid.

[Section 1423 above referred to is found as amended in section 3934.]

Legislation. Sec. 3935. Act 1901 p. 180 § 1, entitled:

AN ACT

To Define Legal Notices and Advertisements.

3936. Selection of newspaper for official notices.

SEC. 6. The governor, secretary of state and treasurer, shall on or before the third Monday in April in each year, designate a daily newspaper, published in the city of Denver, in which shall hereafter be published during the year following such designation, all legal notices and advertisements of the judges of the supreme court, and the clerk of said court, all legal notices and advertisements of the several departments of state, and the appointees under them including the state land board, and the officers and appointees thereof and the superintendent of insurance; also all notices and advertisements required by law to be published in a newspaper in actions against foreign corporations.

[Selection of newspaper in which to publish notice of tax sales. Section 5710.]

Legislation. Sec. 3936. Act 1891 p. 267 § 1, entitled:

AN ACT

To Provide for the Publication of Certain Legal Notices.

3937. Construction of act.

SEC. 7. Such notices and advertisements are not to be substituted for those now required to be published in other newspapers, but additional thereto; *Provided*, That such other publication shall be in a newspaper of general circulation published in the county where the land or other subject matter of such notice is located, and in all cases where a newspaper is published in the county seat, the notice required shall be published in such newspaper.

Legislation. Sec. 3937. Act 1891 § 2, cited under § 3936.

3938. Secretary of state advertise for bids.

SEC. 8. It shall be the duty of the secretary of state to advertise for a period of thirty days next preceding the third Monday in April of each year (except in the year 1891) in some newspaper published at the state capital for bids to do the advertising required in section one of this act.

[Section 1 above referred to is section 3936.]

Legislation. Sec. 3938. Act 1891 § 3, cited under § 3936.

3939. Bids shall be sealed.

SEC. 9. The bids shall be delivered at the office of the secretary of state endorsed, "Proposals for state advertising," and shall remain sealed until the hour specified in the advertisement for opening the same and no bid shall be received after that hour.

Legislation. Sec. 3939. Act 1891 § 4, cited under § 3936.

3940. Opening of bids—Contract let.

SEC. 10. At the hour specified for opening said bids, the secretary of state, in the presence of the governor, and the state treasurer, and in the presence of such bidders as may choose to attend, shall open the said bids, and proceed to determine who is the lowest responsible bidder, and the contract therefor shall be given to the lowest responsible bidder, due consideration being given to the general circulation of the newspapers, so bidding as determined by the sworn statement of the managers thereof; *Provided*. A majority of said officials may reject any and all bids.

Legislation. Sec. 3940. Act 1891 § 5, cited under § 3936.

CHAPTER LXXXI.

LEGAL TENDER.

3941. Gold and silver coin a legal tender.

SECTION 1. That the gold and silver coin issued by the government of the United States shall be a legal tender for the payment of all debts hereafter contracted between the citizens of this state. And the same shall be received in payment of all debts due to the citizens of this state, and in satisfaction of all taxes levied by the authority of the laws of this state.

[Penalty for forging or counterfeiting legal tender. Sections 1704-1705.]

Legislation. Sec. 3941. Act 1893 p. 306 § 1, entitled:

AN ACT

To Make Gold and Silver Coin a Legal Tender for the Payment of All Debts Contracted Between, or Payable to Any Citizen of Th's State.

"No state shall make anything but gold and silver coin a tender in payment of debts." U. S. Const. Art. 1 § 10.

CHAPTER LXXXII.

LIBRARIES.

- I. LIBRARY COMMISSIONS.—3942-3950.
 - II. STATE LIBRARY.—3951-3964.
 - III. PUBLIC LIBRARIES.—3965-3984.
-

I. LIBRARY COMMISSIONS.

- A. Board of Library Commissioners.—3942-3946.
 - B. The Colorado Traveling Library Commission.—3947-3950.
-

A. BOARD OF LIBRARY COMMISSIONERS.

Section.

- 3942. Board of library commissioners—Appointment—Term.
 - 3943. Duty of commission.
 - 3944. Libraries make report to commission.
 - 3945. Report of commission.
 - 3946. Expenses of commission.
-

3942. Board of library commissioners—Appointment—Term.

SECTION 1. There is hereby created a board of library commissioners to consist of five persons, residents of the state, who shall be appointed by the governor, who shall serve without compensation. Upon the passage of this act the governor shall immediately appoint one person to serve for one year, one for two years, one for three years, one for four years, and one for five years, and annually thereafter one for five years. The governor shall fill all vacancies for the unexpired term. The term of office for the

[Supreme court library. Sections 1428-1430.]

commissioners shall begin on April 15. The commission shall annually elect a president and secretary.

Legislation. Sec. 3942. Act 1899 p. 255 § 1, entitled:

AN ACT

Providing for the Appointment and Prescribing the Powers and Duties of a State Board of Library Commissioners and Making an Appropriation Therefor.

3943. Duty of commission.

SEC. 2. The commission shall give assistance, advice and counsel to all free libraries in the state, to all committees which may propose to establish them, and to all persons interested as to the best means of establishing and administering such libraries, the selection of books, cataloguing, maintenance, and other details of library management, as it shall find practicable. The commission may also send its members to aid in organizing new libraries or improving those already established.

Legislation. Sec. 3943. Act 1899 § 2, cited under § 3942.

3944. Libraries make report to commission.

SEC. 3. Every library supported wholly or in part by public funds shall make an annual report to the commission in a form designated by the commission. This includes public libraries, school, college and university libraries, state and supreme court libraries.

Legislation. Sec. 3944. Act 1899 § 3, cited under § 3942.

3945. Report of commission.

SEC. 4. The commission shall make a biennial report to the governor, and five hundred copies of this report shall be published as other official reports are published.

Legislation. Sec. 3945. Act 1899 § 4, cited under § 3942.

3946. Expenses of commission.

SEC. 5. The board may expend a sum not exceeding two hundred fifty dollars annually, for clerical assistance and inci-

dental necessary expenses, including traveling expenses in discharge of its duties, and all sums expended under the provision of this act shall be paid by the state treasurer on warrant of the auditor of state after the bills have been approved by the president and secretary of the board.

Legislation. Sec. 3946. Act 1899 § 5, cited under § 3942.

B. THE COLORADO TRAVELING LIBRARY COMMISSION.

Section.

3947. The Colorado traveling library commission—Appointed by governor.

3948. Appointment of members—Term.

3949. Powers and duties of commission.

3950. Office in capitol building.

3947. The Colorado traveling library commission appointed by governor.

SEC. 6. That there be and hereby is created a board to be known and entitled as "The Colorado Traveling Library Commission," which shall consist of five members, who shall serve without salaries and any compensation whatsoever, and who shall be appointed by the governor in the manner following, from a list of names which shall be submitted to him by the executive board of the Colorado federation of women's clubs. The Colorado traveling library commission shall go into operation on July 1, A. D. 1903, and the terms of office of the members thereof shall date from July 1.

Legislation. Sec. 3947. Act 1903 p. 353 § 1, entitled:

AN ACT

For the Establishment and Maintenance of a System of Free Traveling Libraries in the State of Colorado, and to Appropriate Money for the Support of the Same.

3948. Appointment of members—Term.

SEC. 7. That the first board hereby provided for shall serve

as follows: The first two persons selected by the governor from a list of names submitted to him by the executive board of the Colorado federation of women's clubs, shall serve for one year; the second two persons selected by the governor from a list of names submitted to him by the executive board of the Colorado federation of women's clubs shall serve for a period of two years; the other members selected by the governor from a list of names submitted to him by the executive board of the Colorado federation of women's clubs shall serve for a period of three years; that upon the expiration of the terms of office of the members of the first board, appointments of successors shall be made by the governor as herein provided from a list of names submitted to him by the executive board of the Colorado federation of women's clubs, and the term of office thereafter shall be for a period of three years, or until their successors, respectively, are appointed and qualified.

Legislation. Sec. 3948. Act 1903 § 2, cited under § 3947.

3949. Powers and duties of commission.

SEC. 8. That the said Colorado traveling library commission shall have power to take and hold, in the name of the state of Colorado, title to all books, property and apparatus acquired by purchase or otherwise, and to do any and all things necessary to carry out the intention of this act to create and keep in operation free traveling libraries for the state of Colorado; to make such reasonable rules and regulations for the government and control of said libraries, and for the use of the books of said libraries, and of other property, as it may deem necessary and proper; that under such regulations as it may prescribe the said commission is required to send out and keep in circulation among the people of this state such books as may be required in any manner for the circulating libraries, and such books when so sent out shall be kept for the general use of the public, and said commission shall distribute the libraries and at intervals change said libraries in such manner as to secure in the most practical manner the free use and enjoyment of said libraries by the people of this state.

Legislation. Sec. 3949. Act 1903 § 3, cited under § 3947.

3950. Office in capitol building.

SEC. 9. That the board of capitol managers be and they are hereby authorized and directed to set aside and provide suitable accommodations in the capitol building of this state for the use of the Colorado traveling library commission to carry out the intent and purposes of this act.

Legislation. Sec. 3950. Act 1903 § 4, cited under § 3947.

II. STATE LIBRARY.

Section.

- 3951. Superintendent of public instruction, librarian—Office hours.
- 3952. Librarian have charge of books, maps, etc.—Keep file of newspapers.
- 3953. Shall receive books sent to library.
- 3954. Shall acknowledge receipt—Keep record.
- 3955. Shall make rules—Direct expenditures.
- 3956. Shall exchange statutes, documents, with other bodies.
- 3957. State publications given public libraries.
- 3958. Visiting library—Taking out books—Regulation as to public officers.
- 3959. Librarian make biennial report.
- 3960. Shall issue circular inviting deposits.
- 3961. Shall label and classify specimens—Keep book.
- 3962. Circular shall specify what is wanted.
- 3963. Cabinet shall be open to inspection.
- 3964. Librarian shall give bond.

3951. Superintendent of public instruction, librarian—Office hours.

SEC. 10. The state superintendent of public instruction shall be ex officio librarian for the state. The state library shall be kept in the rooms provided by the state for the same. It shall be the duty of the librarian to keep said rooms open from the hour of ten o'clock a. m. until twelve o'clock m., and from two o'clock p. m. until four o'clock p. m. on each day throughout the year, Sundays and holidays excepted.

[Superintendent may employ an assistant librarian, see section 5376.]

Legislation. Sec. 3951. Act of 1861 p. 110 § 1, repealed and substituted by Act 1865 p. 76 §§ 1, 2. Amended 1866 p. 67 § 1 R. S. p. 421 § 1, G. L. § 1604, G. S. § 2076.

3952. Librarian have charge of books, maps, etc.—Keep file of newspapers.

SEC. 11. The librarian shall have the charge and custody of all books, maps, papers, charts, engravings, paintings, and all other things properly belonging to the library or directed to be deposited therein; and shall also keep a regular file of all newspapers published in the state, which shall be donated thereto.

Legislation. Sec. 3952. Act 1861 p. 110 § 2. R. S. p. 442 § 2. G. L. § 1605. G. S. § 2077.

3953. Shall receive books sent to library.

SEC. 12. It shall be the duty of the librarian to receive and transfer all books or documents sent by other states or territories to the state library from the post-office or other depot to which they may have been consigned, and to properly label and arrange them in the library.

Legislation. Sec. 3953. Act 1861 p. 110 § 3. R. S. p. 422 § 3. G. L. § 1606. G. S. § 2078.

3954. Shall acknowledge receipt—Keep record.

SEC. 13. The state librarian shall cause the receipt of each book, map or other document that may come into his possession to be acknowledged; and he shall keep record of all books and documents so received and report the same as provided by law.

Legislation. Sec. 3954. Act 1861 p. 110 § 4. R. S. p. 422 § 4. G. L. § 1607. G. S. § 2079.

3955. Shall make rules—Direct expenditures.

SEC. 14. The librarian shall have full power to make any rules and regulations proper and necessary for the preservation and increase the library not inconsistent with the law, which the librarian shall in all things observe, and to superintend and direct all expenditures of appropriations made for the library.

Legislation. Sec. 3955. Act 1861 p. 110 § 5. R. S. p. 422 § 5. G. L. § 1608. G. S. § 2080.

3956. Shall exchange statutes, documents, with other bodies.

SEC. 15. The librarian is hereby directed to exchange statutes, journals, legislative documents and other books with other legislative bodies and libraries, as he shall deem proper.

Legislation. Sec. 3956. Act 1861 p. 110 § 7. R. S. p. 422 § 7. G. L. § 1610. G. S. § 2081.

3957. State publications given public libraries.

SEC. 16. That the state librarian be, and he is hereby, directed to turn over to the librarian of any free public library in this state, if desired for public use therein, and take the receipt of such librarian therefor, one copy of each and every such book, pamphlet or periodical published by this state as can be spared, now on hand, or which shall be published by the state from time to time hereafter.

Legislation. Sec. 3957. Act 1887 p. 363 § 1, entitled:

AN ACT

To Provide for the Donation of State Publications to Free Public Libraries in This State.

3958. Visiting library—Taking out books—Regulation as to public officers.

SEC. 17. All persons shall be permitted to visit the library and examine and read the books therein, and may take out any book and retain the same for three weeks by depositing a sum of money equal to double the value of the book with the librarian, which sum shall be returned to the owner on the return of the book. Members and ex-members of the legislative assembly, judges of the supreme court, district and county courts, officers of the state and their clerks, actually engaged in the service of the state, and clerks and sergeants-at-arms of the legislative assembly, shall have free access to the use of the books of the library, and have the liberty of taking the same out under such regulations as the librarian may determine; but no public officer or other person having the right to take books out of the library shall have the authority to give any other person an order to take books out of the same; and if any person having such right shall give such or-

der, or otherwise obtain books from the same, to be used by any other person not having the right, such person shall thereupon forfeit all right to take books therefrom.

Legislation. Sec. 3958. Act 1861 p. 111 § 8. Amended Act 1866 p. 67 § 1. R. S. p. 422 § 8. G. L. § 1611. G. S. § 2082.

3959. Librarian make biennial report.

SEC. 18. The state librarian shall, on the first day of each regular session of the general assembly, make a full and complete report of all receipts and expenditures, and of the condition of the library, and all other matters in relation thereto, for the information of the general assembly.

Legislation. Sec. 3959. Act 1861 p. 112 § 9. R. S. p. 423 § 9. G. L. § 1612. G. S. § 2083.

3960. Shall issue circular inviting deposits.

SEC. 19. It shall be the duty of the state librarian to issue a printed circular to the citizens of the state, inviting them to deposit in the state cabinet such minerals and geological specimens as any citizen may find upon his premises, or in any portion of the state.

Legislation. Sec. 3960. Act 1861 p. 112 § 10. R. S. p. 423 § 10. G. L. § 1613. G. S. § 2084.

3961. Shall label and classify specimens—Keep book.

SEC. 20. Whenever any such specimens may be deposited in the cabinet, it shall be the duty of the librarian to correctly label and classify each specimen, and to enter in a book kept for that purpose the name of the donor, and the character and quality of each specimen donated.

Legislation. Sec. 3961. Act 1861 p. 112 § 11. R. S. p. 423 § 11. G. L. § 1614. G. S. § 2085.

3962. Circular shall specify what is wanted.

SEC. 21. The circular of the librarians shall specify the kind and quality of the specimens desired, both in geology, mineralogy and fossils.

Legislation. Sec. 3962. Act 1861 p. 112 § 12. R. S. p. 423 § 12. G. L. § 1615. G. S. § 2086.

3963. Cabinet shall be open to inspection.

SEC. 22. The cabinet so collected shall be open for the inspection of all persons, subject to the rules and regulations of the librarian, for the proper preservation of such specimens during the hours as provided for the state library.

Legislation. Sec. 3963. Act 1861 p. 112 § 13. R. S. p. 423 § 13. G. L. § 1616. G. S. § 2087.

3964. Librarian shall give bond.

SEC. 23. The state librarian, before he enters upon the discharge of his official duties, shall give a bond, with good and sufficient security, to be approved by the governor, made payable to the state of Colorado, conditioned that he shall faithfully discharge the duties of librarian, and deliver over to his successor in office all books and other property belonging to the state library, according to law, and such rules and regulations as may be adopted by the general assembly.

Legislation. Sec. 3964. Act 1861 p. 112 § 14. R. S. p. 423 § 14. G. L. § 1617. G. S. § 2088.

III. PUBLIC LIBRARIES.

Section.

- 3965. Fines applied to public libraries.
- 3966. Any city may establish library.
- 3967. Mayor appoint library committee.
- 3968. Committee receive and spend moneys—Appoint librarian—Report.
- 3969. Committee have no compensation—But each give bond.
- 3970. Shall have power to sue—In what name.
- 3971. City council may apply moneys—Library allow representation.
- 3972. Cities may establish public libraries—Tax levy.
- 3973. Board of directors—Appointment.
- 3974. Term of office—Vacancies.
- 3975. Compensation of members—Removal.
- 3976. Board a body corporate—Powers of board.
- 3977. Library fund.
- 3978. Library to be public—Rules and regulations.
- 3979. Board report to city council.

III. PUBLIC LIBRARIES.

Continued.

Section.

3980. City regulate penalties by ordinance.

3981. May receive donations.

3982. May purchase or lease library—Stockholders' meeting.

3983. Acquiescence of stockholders necessary—Execution of deed or lease.

3984. Repeal—Saving clause.

3965. Fines applied to public libraries.

SEC. 24. The clear proceeds of all fines for any breach of any penal ordinance of any city in this state, and for penalties or upon any recognizance in criminal proceedings, may be exclusively applied to the establishment and support of public libraries as hereinafter provided.

Legislation. Sec. 3965. Act 1872 p. 145 § 1. G. L. § 2206. G. S. § 2089.

3966. Any city may establish library.

SEC. 25. Any city in this state may establish a public library under the provisions of this act, whenever the common council of such city shall by ordinance determine to establish the same.

[See also section 6525, paragraph 76.]

Legislation. Sec. 3966. Act 1872 p. 145 § 2. G. L. § 2207. G. S. § 2090.

3967. Mayor appoint library committee.

SEC. 26. Whenever the common council of any city in this state shall pass an ordinance to establish such public library, it shall be the duty of the mayor of such city to appoint three competent persons, who shall constitute a library committee for the term of one year from the date of their appointment, and until their successors are duly appointed and qualified; and such appointment shall be confirmed by the common council of such city.

Legislation. Sec. 3967. Act 1872 p. 145 § 3. G. L. § 2208. G. S. § 2091.

3968. Committee receive and spend moneys—Appoint librarian—Report.

SEC. 27. It shall be the duty of such library committee, to collect from the proper officers all moneys hereinbefore provided to be appropriated for such library purposes; to expend the same in such manner as they may deem most expedient for establishing and maintaining such library; to make all rules and regulations respecting the same; to appoint a librarian, who shall hold his office at the pleasure of the committee, and to fix the salary he shall receive, subject to the approval of the common council of such city; to have the general management and control of the library and funds appropriated for such library purposes, and it shall be the duty of such committee to make an annual report of their acts to the common council of such city, giving a detailed statement of all moneys received, with the sources from which they were derived. Also a detailed account of all moneys expended, by them, and the purposes for which they were expended.

Legislation. Sec. 3968. Act 1872 p. 146 § 4. G. L. § 2209. G. S. § 2092.

3969. Committee have no compensation—But each give bond.

SEC. 28. Each member of such library committee shall perform his duties without compensation, and shall, before entering upon his duties, give a bond to be approved by the mayor of such city, in the sum of five hundred dollars, conditioned for the faithful performance of his duties.

Legislation. Sec. 3969. Act 1872 p. 146 § 5. G. L. § 2210. G. S. § 2093.

3970. Shall have power to sue—In what name.

SEC. 29. Such committee and their successors shall have power to sue and be sued, in the name of the library committee of the city in which they are appointed, in all matters relating to such library or library fund.

[Exempt from taxation, Constitution, article 10, section 4, and section 5545.]

Legislation. Sec. 3970. Act 1872 p. 146 § 6. G. L. § 2211. G. S. § 2094.

3971. City council may apply moneys—Library allow representation.

SEC. 30. That the common council or board of trustees of any city or town in this state are hereby authorized, if they shall see fit, to apply any part of the fund referred to in section one, in aid of any library association organized for the benefit of the public, heretofore or hereafter established; *Provided*, Such library association will give to the common council or board of trustees such representation upon its board of management as may be required.

[Section 1 above referred to is section 3965.]

Legislation. Sec. 3971. Act 1876 p. 85 § 7. G. L. § 2212. G. S. § 2095.

3972. Cities may establish public libraries—Tax levy.

SEC. 31. The city council of any city or the board of trustees of any incorporated town, whether existing under special charter or by general law, shall have the power to establish and maintain a public library and reading room for the use and benefit of the inhabitants thereof, and may levy a tax therefor of not to exceed one mill on the dollar annually, and in cities of over 100,000 inhabitants, after such library and reading room shall have been duly established, they shall levy a tax of not less than one-fourth of a mill and not to exceed one mill on the dollar annually, upon all the taxable property in such city or incorporated town; such taxes to be levied and collected in like manner with the general taxes of such city or incorporated town, and to be known as "the library fund."

[See also section 6525, paragraph 76.]

Legislation. Sec. 3972. Act 1899 p. 414 § 1, entitled:

AN ACT

Concerning Free Public Libraries and Reading Rooms in Cities and Incorporated Towns.

3973. Board of directors—Appointment.

SEC. 32. When any city council or board of trustees shall have decided to establish and maintain a public library and reading room under this act, the mayor of such city shall, with the approval of the city council or board of trustees proceed to appoint

six persons from the citizens at large with reference to their fitness for the duties to be performed, who, with the mayor, (who shall be president,) shall constitute a board of directors for the same, and not more than one member of the city council shall be at any one time a member of such board.

Legislation. Sec. 3973. Act 1899 § 2, cited under § 3972.

3974. Term of office—Vacancies.

SEC. 33. Said directors so appointed by the mayor shall hold office one half for one year, and one half for two years from the 1st of July following their appointment, and at their first regular meeting they shall cast lots for the respective terms, and annually thereafter and before the 1st day of July of each year, the members of said board, whose terms of office shall not expire on said 1st day of July, shall elect three (3) directors for the ensuing two years to take the place of the retiring directors. All vacancies, except that of president, arising from any cause shall be filled by election by the remaining members of the board.

Legislation. Sec. 3974. Act 1899 § 3, cited under § 3972.

3975. Compensation of members—Removal.

SEC. 34. No member of said board shall receive any compensation as such and any member may be removed by his associates for misconduct or neglect of duty.

Legislation. Sec. 3975. Act 1899 § 4, cited under § 3972.

3976. Board a body corporate—Powers of board.

SEC. 35. Such board of directors shall constitute a body corporate by the name and style of "The board of directors of the public library of the city of.....," and in that name may receive by gift, grant or device, real and personal property for the uses of said library, and be a party to all suits, proceedings and contracts the same as municipal corporations in this state; said board shall have power:

First—To elect such officers as they shall deem necessary.

Second—To establish such by-laws, rules and regulations for

their own guidance, and the government and management of the library and reading room as may be deemed expedient, not inconsistent with the laws of this state.

Third—To exercise exclusive control of the employment and discharge of a librarian, assistants and employes, the expenditure of all moneys received for the library fund, the construction of library buildings, the supervision, care and custody of the grounds and buildings provided, and the management, care and disposition of any and all real and personal property received by such board for the use of said library from any source whatever.

Fourth—To lease or purchase all necessary grounds and buildings, and to construct all necessary buildings and other appliances.

Fifth—To contract an indebtedness by borrowing money or issuing bonds to secure funds wherewith to purchase all necessary grounds and erect all necessary buildings for library purposes, and to secure the repayment of the same by a mortgage on real estate belonging to said board, but no lien shall at any time be placed upon the personal property belonging to said board.

Sixth—To do any and all things usual and necessary, and not in conflict with the laws of the state in maintaining and developing public libraries and reading rooms for the benefit of the inhabitants of their respective cities and incorporated towns.

Legislation. Sec. 3976. Act 1899 § 5, cited under § 3972.
There is no § 6 in this Act.

3977. Library fund.

Sec. 36. All moneys collected or received shall be deposited in the treasury of such city or incorporated town, to the credit of "The library fund," and shall be kept separate and apart from other moneys of such city or incorporated town, and shall not, in any event, be turned in to the general fund of such city or incorporated town; and the same may be drawn upon by the proper officers of such city or town, upon the properly authenticated vouchers of said board of directors.

Legislation. Sec. 3977. Act 1899 § 7, cited under § 3972.

3978. Library to be public—Rules and regulations.

SEC. 37. Every library and reading room established under this act, or operating by virtue of any of its provisions, shall be forever free to the use of the inhabitants of the city or town where located always subject to such reasonable rules and regulations as the board of directors may adopt in order to render the use of said library and reading room of the greatest benefit to the greatest number; and said board may exclude any and all persons who shall wilfully violate such rules, and may also extend the privileges to persons residing in this state outside of such city or incorporated town, upon such conditions as they may prescribe.

Legislation. Sec. 3978. Act 1899 § 8, cited under § 3972.

3979. Board report to city council.

SEC. 38. The board of directors shall annually before the third Monday in March, make a report to the city council of the condition of their trust on the first day of March, which report shall show for the preceding twelve months the moneys received, its sources, disposition and amount on hand; number of books received, lost, condemned, and remaining on hand; number of persons using the reading room and the number of periodicals regularly filed for their use, number of persons taking books for home reading on cards, and the number of books loaned; names of persons donating cash, books or other property, and a description thereof; together with such other statistics, information and suggestions as they may deem of general interest.

Legislation. Sec. 3979. Act 1899 § 9, cited under § 3972.

3980. City regulate penalties by ordinance.

SEC. 39. The city council or board of trustees of any such city or the board of trustees of any incorporated town shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury to such library and reading room, or to the buildings or grounds, or other property thereof; and for injury to or failure to return any book belonging to such library.

Legislation. Sec. 3980. Act 1899 § 10, cited under § 3972.

3981. May receive donations.

SEC. 40. Any person may donate money, personal property or real estate for the benefit of such library or reading room, and vest title thereto in the board of directors to be held and controlled by them, when accepted, according to the terms of the deed, gift or bequest.

Legislation. Sec. 3981. Act 1899 § 11, cited under § 3972.

3982. May purchase or lease library—Stockholder's meeting.

SEC. 41. Whenever any library association, organized under any law of this state or not, and owning any real or personal property in this state, shall desire to sell or lease the same, or any part thereof, absolutely or with conditions, to the board of directors of any free public library, organized under the laws of this state, such sale or lease may be made in the manner following, viz: The directors of such association shall call a meeting of all the members, subscribers or stockholders thereof, to be held at the rooms of said library or office of the secretary of such association, written or printed notice of the time, place and object of such meeting, and of the terms and conditions of the proposed sale or lease being first mailed, at least thirty (30) days prior to the time of such meeting, to the address of each member, subscriber or stockholder whose place of residence is known to any of the officers or directors of such association, and by publishing such notice for at least thirty (30) consecutive days next preceding the time of such meeting in some newspaper published and of general circulation in the county where the property of said association is situate.

Legislation. Sec. 3982. Act 1899 § 12, cited under § 3972.

3983. Acquiescence of stockholders necessary—Execution of deed or lease.

SEC. 42. If the members, subscribers or stockholders, representing the majority in amount of the stock of such association, shall vote at such meeting in favor of such sale or lease upon the terms or conditions specified in such notice, or, in case said association shall consist of two or more departments, if a majority of

the members, subscribers or stockholders of each department shall vote at such meeting in favor of such sale or lease so specified, then the president and secretary shall cause a record of the proceedings of such meeting, verified by the oath of the president thereof, together with an affidavit of the service of publication of notice as herein required, to be filed in the office of the clerk and recorder of the county where the property of such association is situate; after which the president and secretary of the said association shall be and are hereby authorized and empowered to execute any and all necessary deeds, leases, bills of sale, or other instruments in writing, to carry out the object and intent of said vote, which, when duly executed, shall be sufficient to pass to the board of directors of such free public library all the legal and equitable title of said association in and to the real or personal property in said instrument described as therein set forth.

Legislation. Sec. 3983. Act 1899 § 13, cited under § 3972.

3984. Repeal—Saving clause.

SEC. 43. An act entitled, "An act to authorize cities and incorporated towns to establish and maintain free public libraries and reading rooms:" approved April 3rd, 1893, is hereby repealed, but neither said repeal, nor anything contained in this act shall in any manner affect or impair any proceedings had or taken under said act, or any rights or privileges acquired under said act and all proceedings heretofore taken under said act shall be considered as though taken under the provisions hereof, and said proceedings shall be continued in accordance with the provisions of this act.

Legislation. Sec. 3984. Act 1899 § 14, cited under § 3972.

CHAPTER LXXXIII.

LICENSES.

- I. LICENSES GENERALLY.—3985-4012.
- II. STATE LICENSE INSPECTORS.—4012-A.-4012-F.

I. LICENSES GENERALLY.

Section.

- 3985. Who must have license to vend goods.
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3985. Who must have license to vend goods.

SECTION 1. No auctioneer, peddler or other person or persons, company or corporation, shall be permitted to sell, vend, or retail, either at private sale or public auction, any goods, wares, or merchandise, without first having obtained a license for that purpose, as hereinafter provided; *Provided, however, That this section shall not extend to any person selling produce, provision or mining tools.*

[See Chapter 10, Auctions, for rules and penalties concerning auctioneers.]

[Marriage licenses, see section 4166.]

[Wage broker must have license. Section 7001.]

[License to practice law. Section 229.]

[License to practice as physician. Section 6062.]

[Dentist must have license. Section 2071.]

[Private detective must have license. Section 2085.]

[Insurance agents and brokers must have license. Section 3107.]

[For hunting license and guide license, see Chapter 58, Game and Fish.]

[License to conduct sparring exhibition. Section 1765.]

[License to conduct private eleemosynary institution. Section 505.]

[For license to sell convict made goods see section 828.]

[License of itinerant vendor. Section 3565.]

[Permit of commission merchant. Section 3580.]

[Employment agency must have license. Section 2476.]

Legislation. Sec. 3985. Act 1861 p. 69 § 1. R. S. p. 424 § 1. G. L. § 1618. G. S. § 2096. The proviso was added by Act 1862 p. 73 § 1.

This section as to peddlers is superseded by § 3566.

CITATIONS.

A conviction under this chapter for selling liquor without a license within the military reservation of Ft. Lyon, was good.—*Reynolds v. Peo.*, 1 C. 180.

This and secs. 3990 and 3991 must be construed together as a whole to determine what persons are subject to a license as peddlers.—*Ames v. Peo.*, 25 C. 510, 55 P. 725.

3986. County commissioners may grant licenses.

SEC. 2. The county commissioners of the respective counties in this state shall have power to grant such licenses, on the payment into the county treasury by the applicant for such license, of a sum, to be assessed by said commissioners, not less than five nor more than one hundred dollars.

Legislation. Sec. 3986. Act 1861 p. 69 § 2. R. S. p. 424 § 2, Act 1870 p. 79 § 1. G. L. § 1619. G. S. § 2097, Act 1887 p. 338 § 1. The amendment of 1870 excepted Summit county, and the Act of 1887 struck out the exception, leaving the Act as it originally stood in 1861.

3987. What license shall authorize.

SEC. 3. Such license shall authorize the person receiving it to vend, sell and retail goods, wares and merchandise within said county, for the space of one year from the time of granting the same.

Legislation. Sec. 3987. Act 1861 p. 69 § 3. R. S. p. 424 § 3. G. L. § 1620. G. S. § 2098.

3988. Clerk may grant permit—When—Payment.

SEC. 4. If the board of county commissioners shall not be in session when the application is made, the clerk of the county may grant a written permission to the applicant to vend, sell and retail goods, wares and merchandise, until the end of the next session of the board of county commissioners, or, if said board take no action upon the case, for the term provided in the third section of this act. At the time of granting such license the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

[Section 3 above referred to is section 3987.]

Legislation. Sec. 3988. Act 1861 p. 69 § 4. R. S. p. 424 § 4. G. L. § 1621. G. S. § 2099.

3989. County board examine permits—Fix license fee.

SEC. 5. When a permission shall be granted by the clerk, in vacation, as aforesaid, it shall be the duty of the board of county commissioners, at their next meeting thereafter, to examine such permit, and if approved, to proceed forthwith to assess the amount to be paid for licenses, to be paid as in the case of original applications. But if the board of commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than fixed by the clerk.

Legislation. Sec. 3989. Act 1861 p. 70 § 5. R. S. p. 424 § 5. G. L. § 1622. G. S. § 2100.

3990. All storekeepers must have license.

SEC. 6. If any person or persons, company or corporation, shall, directly or indirectly, keep a store, or sell, vend, or retail

any goods, wares or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars.

Legislation. Sec. 3990. Act 1861 p. 70 § 6. R. S. p. 425 § 6. G. L. § 1623. G. S. § 2101.

CITATIONS.

This and secs. 3985 and 3991 must be construed together as a whole to determine what persons are subject to a license as peddlers.—*Ames v. Peo.*, 25 C. 510, 55 P. 725.

3991. Parties exempt from paying fee.

SEC. 7. The preceding section shall not be construed to extend to the sale of goods, wares or merchandise by merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this state, nor to persons who sell commodities manufactured or raised by themselves in this state.

Legislation. Sec. 3991. Act 1861 p. 70 § 7. R. S. p. 425 § 7. G. L. § 1624. G. S. § 2102.

CITATIONS.

This and secs. 3985 and 3990 must be construed together as a whole to determine what persons are subject to a license as peddlers.—*Ames v. Peo.*, 25 C. 510, 55 P. 725.

3992. County board may grant licenses—Condition—Bond.

SEC. 8. The board of county commissioners may grant licenses to keep saloons, hotels, public houses, or groceries, upon the following conditions, to wit:

First—The applicant shall pay into the county treasury, for the privilege granted, a sum not exceeding three hundred dollars, nor less than twenty-five dollars, in the discretion of the board.

Second—The applicant shall execute bond in the penalty of five hundred dollars, with one or more securities, to be approved by the board, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in his house.

[Power of towns or cities to grant licenses. Section 6525, paragraphs 13-18.]

Legislation. Sec. 3992. Act 1861 p. 70 § 8. R. S. p. 425 § 8. G. L. § 1625. G. S. § 2103.

CITATIONS.

This section cited in holding that a license issued by a city is no defense to a prosecution under the general law.—*Paton v. Peo.*, 1 C. 78.

The legislature may confer concurrent jurisdiction upon the city and county authorities to demand each a license for vending liquors.—*Hetzer v. Peo.*, 4 C. 46.

Secs. 3992-3996 cited in connection with sec. 1805 as to the definition and meaning of the word "saloon."—*Cardillo v. Peo.*, 26 C. 359, 58 P. 679.

This section referred to in connection with sec. 3994 as to revoking licenses.—*Jefferson County v. Mayr*, 31 C. 174, 74 P. 458.

3993. Board may reject application for saloons.

SEC. 9. Upon application for licenses to keep saloons or groceries, the board may reject or grant the same in their discretion.

[Board shall not grant license to sell liquor near labor camp. Section 1801.]

[Penalty for selling liquor near labor camp. Section 1802.]

[Penalty for selling liquor near national guard encampment. Section 4407.]

Legislation. Sec. 3993. Act 1861 p. 70 § 9. R. S. p. 425 § 9. G. L. § 1626. G. S. § 2104.

3994. Board may revoke saloon or grocery license.

SEC. 10. The board of county commissioners shall have power, upon complaint being made to them, to revoke any license granted to keep a saloon or grocery, whenever they may be satisfied that privileges granted have been abused, or that the person to whom the license was granted has violated the law.

Legislation. Sec. 3994. Act 1861 p. 70 § 10. R. S. p. 425 § 10. G. L. § 1627. G. S. § 2105.

CITATIONS.

The board may hear evidence to determine whether or not the law has been violated. A conviction in court is not necessary.—*Jefferson County v. Mayr*, 31 C. 174, 74 P. 458.

3995. Saloon license describe house.

SEC. 11. Licenses granted to keep saloons or groceries shall not authorize the person obtaining the license to vend or sell spirituous or vinous liquors in more than one place or house, and every license shall describe the house and place intended to be occupied. The board of trustees, or common council of every incorporated town or city, shall have exclusive authority to license saloons, groceries and all places wherein spirituous, vinous, malt or other intoxicating liquors are sold.

Legislation. Sec. 3995. Act 1861 p. 71 § 11. R. S. p. 425 § 11. G. L. § 1628. G. S. § 2106. Amended by Act 1885 p. 264 § 1. The amendment struck out the last words of the section "by quantities less than one quart."

CITATIONS.

Where exclusive authority is given a city to license the sale of liquor a license from the county was not necessary. (*Paton v. Peo.*, 1 C. 79, Distinguished.)—*Hetzer v. Peo.*, 4 C. 46.

When a town has exclusive power to license the sale of liquor a license from the county is not a defence to an action for violating an ordinance prohibiting such sale without a license from the town.—*Peo. v. Raims*, 20 C. 492, 39 P. 342.

This section cited in holding that to constitute a violation of an ordinance prohibiting the giving away of liquor it is not necessary that the liquor be given away for the purpose of profit or gain.—*Litch v. Peo.*, 19 A. 430, 75 P. 1082.

3996. Definition of saloon—Grocery.

SEC. 12. A saloon or grocery shall be deemed to include all places where spirituous or vinous liquors are sold by quantities less than one quart.

Legislation. Sec. 3996. Act 1861 p. 71 § 12. R. S. p. 426 § 12. G. L. § 1629. G. S. § 2107. The R. S. section changed the word "retailed" to read "sold."

CITATIONS.

In a prosecution under this section held that a license from the town of Blackhawk was no defence.—*Paton v. Peo.*, 1 C. 78.

This and other sections cited in defining the word "saloon" as used in sec. 1805.—*Cardillo v. Peo.*, 26 C. 359, 58 P. 679.

3997. Selling liquor to Indians—Penalty.

SEC. 13. No retailer of spirituous liquors, or other person or persons, shall sell, exchange or otherwise deliver to any Indian or Indians, within the boundaries of this state, any spirituous liquors, under the penalty of fifty dollars for every such offense; the one-half thereof for the use of the county wherein the offense is committed, and the other half for the person informing.

[See also section 1807.]

Legislation. Sec. 3997. Act 1861 p. 71 § 14. R. S. p. 426 § 14. G. L. § 1631. G. S. § 2109.

CITATIONS.

A conviction under this chapter for selling liquor without a license at and within the military reservation of Fort Lyon was good.—*Reynolds v. Peo.*, 1 C. 180.

3998. Keeping disorderly house—Suppression of license.

SEC. 14. Every person licensed to keep a saloon or grocery who shall knowingly suffer any disorder, drunkenness or unlawful games, whatsoever, in his, her or their house, his, her or their license or licenses shall be suppressed by the board of county commissioners.

[License revoked if gambling allowed. Section 1797.]

Legislation. Sec. 3998. Act 1861 p. 71 § 15. R. S. p. 426 § 15. G. L. § 1632. G. S. § 2110.

CITATIONS.

This section cited in defining the word "saloon" as used in sec. 1805.—*Cardillo v. Peo.*, 26 C. 359, 58 P. 679.

3999. Penalty for operating without license.

SEC. 15. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of this state, he shall, on conviction thereof, be fined in a sum not exceeding three hundred dollars or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

[Dining cars may operate without license, sections 5521 and 5522.]

[Penalty for selling liquor without license. Section 1798.]

Legislation. Sec. 3999. Act 1862 p. 79 § 1. R. S. p. 426 § 17. G. L. § 1634. G. S. § 2112.

4000. Theatres, circus, etc., included—Sunday—Fine.

SEC. 16. This chapter shall extend to and include all theatres, circuses and shows, where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theatre, circus or show, on the Sabbath or Lord's day; but any person who shall so offend on such day shall be fined in a sum not less than fifty nor more than one hundred dollars, for every such offense.

[Saloons must close on Sunday. Section 1805.]

Legislation. Sec. 4000. Act 1862 p. 79 §§ 2, 3. R. S. p. 426 § 18. G. L. § 1635. G. S. § 2113.

4001. Magistrates report fines to county board.

SEC. 17. Every magistrate or other officer to whom any fines or penalties, imposed by this chapter, shall be paid for the use of the county, shall, at the next meeting of the board of county commissioners, make a report of the amount thereof and pay the same into the county treasury.

Legislation. Sec. 4001. Act 1861 p. 72 § 19. R. S. p. 426 § 19. G. L. § 1636. G. S. § 2114.

4002. Prosecutors competent witnesses.

SEC. 18. Persons prosecuting or giving information under the provisions of this chapter may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

Legislation. Sec. 4002. Act 1861 p. 72 § 20. R. S. p. 427 § 20. G. L. § 1637. G. S. § 2115.

4003. Recovering of penalties—Duty of justices.

SEC. 19. Penalties incurred by a violation of the provisions of this chapter may be recovered by action of debt, or by indictment in the name of the people of the state of Colorado, for the use of the proper county, before any justice of the peace or court of competent jurisdiction of the proper county, upon complaint of any citizens of such county; and any justice of the peace or other

official, into whose hands such penalty shall properly come, shall, unless otherwise required by law, make report of such recovery to the board of county commissioners; and at the next regular meeting succeeding, the collector of such penalty shall pay into the county treasury the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

Legislation. Sec. 4003. Act 1861 p. 72 § 21. R. S. p. 427 § 21. G. L. § 1638. G. S. § 2116.

4004. Appeal.

SEC. 20. Appeals and writs of certiorari may be taken from proceedings had under the provisions of this chapter, as in other cases.

Legislation. Sec. 4004. Act 1861 p. 72 § 22. R. S. p. 427 § 22. G. L. § 1639. G. S. § 2117.

4005. Minimum liquor license fee.

SEC. 21. In all cities, whether incorporated under the general laws or by special charter the license fee for the privilege of selling spirituous, vinous and malt liquors, in less quantities than one gallon, shall not be less than six hundred dollars per annum. In incorporated towns such license fee shall not be less than five hundred dollars per annum. In counties where the boards of county commissioners are now authorized by law to issue licenses to sell spirituous, vinous and malt liquors, such license fee shall not be less than three hundred dollars per annum.

Legislation. Sec. 4005. Act 1889 p. 228 § 1, entitled:

AN ACT

Regulating the issuance of Licenses for the Sale of Malt, Vinous and Spirituous Liquors.

CITATIONS.

This section did not repeal subdivision 18 of sec. 6525 relating to permits to druggists.—*Canfield v. Leadville*, 7 A. 456, 43 P. 911.

4006. Conditions of bond—Examination of sureties.

SEC. 22. No person shall be licensed to sell spirituous, vinous

or malt liquors, in less quantity than one gallon, in any city, town or county in the state, until he shall have first executed a bond in a penal sum of not less than two thousand dollars, to be fixed by the board of county commissioners or the municipal authorities granting the license, which said bond shall run to the people of the state of Colorado; shall be signed by the applicant, and at least two good and sufficient sureties of the county in which the license is to be issued; shall be conditioned that the applicant will keep an orderly house, that he will not permit any unlawful gaming or riotous conduct in his house; that he will not violate any provisions of the laws of the state in reference to the selling or giving away of spirituous, vinous or malt liquors, nor of the ordinances of the town or city in which such license is to be issued, if such be the case, in relation to such selling and giving away, and that he will pay all damages, fines, penalties and forfeitures which may be adjudged against him for the violation of any such laws or ordinances, and shall be approved by the board of county commissioners or municipal authorities issuing said license. The board of county commissioners or municipal authorities granting such license may examine any person offered as surety upon such bond under oath; may require him to make, subscribe and swear to a written statement of the amount, value and character of property owned by him, over and above all exemptions and liabilities and subject to execution; and any such surety making a false oath or affirmation in such case shall be guilty of perjury, and shall be subject to indictment and prosecution therefor.

Legislation. Sec. 4006. Act 1889 § 2, cited under § 4005.

4007. Bond—By whom sued upon.

SEC. 23. Any bond taken pursuant to this act, may be sued upon for the use of any person, or his legal representatives, who may be damaged by a failure of the principal in said bond to comply with any of its conditions.

Legislation. Sec. 4007. Act 1889 § 3, cited under § 4005.

4008. License to sell malt liquors.

SEC. 24. Boards of county commissioners, boards of trustees

of incorporated towns, and city councils of cities, may, at their discretion, in their respective counties, towns and cities, grant license to applicants to sell malt liquors exclusively, upon the payment of a license fee of not less than one-half of the sum fixed as a license fee in such county, town or city, for the sale of spirituous, vinous and malt liquors, subject, however, to all of the conditions and restrictions set forth in this act.

Legislation. Sec. 4008. Act 1889 § 4, cited under § 4005.

4009. Maximum and minimum length of license.

SEC. 25. No license to sell spirituous, vinous and malt liquors, or vinous and malt liquors, in any county, town or city in this state shall be issued for a greater period than twelve months, nor for a less period than six months, nor until the whole of the license fee due therefor has been paid into the proper treasury of the county, town or city.

Legislation. Sec. 4009. Act 1889 § 5, cited under § 4005.

4010. Can not transfer license.

SEC. 26. No license issued under the provisions of this act shall be transferable by the person to whom the same is issued, provided the board of county commissioners or municipal authorities of the town or city granting the same shall have power to authorize or permit the transfer thereof, upon the filing of a new bond by the person to whom the license is so transferred.

[License not affected by consolidation of towns. Section 6702.]

Legislation. Sec. 4010. Act 1889 § 6, cited under § 4005.

4011. When part of fee may be refunded.

SEC. 27. No board of county commissioners, nor municipal authorities of any town or city issuing a license under the provisions of this act, shall, upon the revocation or surrender of such license, have power to refund any part of the license fee paid therefor, except in the event of the death of the licensee, in which case the proportionate amount received for the unexpired term thereof by the city, town or county issuing said license may be refunded

by the authorities issuing such license to the legal representatives of such deceased licensee.

[Refund of license fee in case of anti-saloon territory. Section 4109.]

Legislation. Sec. 4011. Act 1889 § 7, cited under § 4005.

4012. Can not abridge, limit or revoke.

SEC. 28. Nothing contained in this act shall be construed to abridge, limit or revoke, except as herein specially set forth, the power now vested, or which may hereafter be vested, in the boards of county commissioners of counties and in the municipal authorities of cities and incorporated towns, by the laws of the state and the ordinances of such cities or towns, to control and regulate the sale of spirituous, vinous and malt liquors, and to revoke licenses granted for the sale thereof in their respective counties, towns and cities.

Legislation. Sec. 4012. Act 1889 § 8, cited under § 4005.

II. STATE LICENSE INSPECTORS.

Section.

4012-A. State license inspectors and clerk.

4012-B. Duties of officers.

4012-C. Term of office—Removal.

4012-D. Salaries and expenses.

4012-E. Appropriation.

4012-F. Oath of office—Bond.

4012-A. State license inspectors and clerk.

SEC. 28a. That the state treasurer be and is hereby authorized to appoint five license inspectors and one clerk of license inspection.

Legislation. Sec. 4012-A. § 1 of Act of 1911 S. B. No. 207, entitled:

AN ACT

To Authorize the Appointment of License Inspectors, to Prescribe Their Duties, to Fix Their Compensation, to Make an Appropriation to Provide for the Payment Thereof, and to Repeal All Acts and Parts of Acts in Conflict Herewith. (Approved April 15, 1911.)

4012-B. Duties of officers.

SEC. 28b. It shall be the duty of said license inspectors to go to all parts of the state as directed by the state treasurer, and ascertain whether or not all persons who are now required by law to have a state license, have secured the same; to collect any and all license fees due from parties required by law to have a state license, and to receipt therefor, and pay the same over to the state treasurer; to request the district attorney to prosecute any and all violations of the acts requiring state license. It shall be the duty of the clerk of license inspection to keep all books of record concerning the issuance and transfer of license, and all moneys received by the treasurer therefor, and to perform whatever other service may be required by the state treasurer.

Legislation. Sec. 4012-B. Sec. 2 of Act of 1911, cited under § 4012-A.

4012-C. Term of office—Removal.

SEC. 28c. Said inspectors and said clerk shall hold their office during the pleasure of the state treasurer, and may be removed by him at any time, and on such removal the state treasurer shall have full power to appoint successors to fill vacancies.

Legislation. Sec. 4012-C. Sec. 3 of Act of 1911, cited under § 4012-A.

4012-D. Salaries and expenses.

SEC. 28d. Each of said inspectors shall receive an annual salary of fifteen hundred dollars (\$1,500.00) payable monthly out of the general fund, and his reasonable necessary traveling expenses not exceeding six hundred dollars (\$600.00) per annum. The said clerk shall receive a salary of fifteen hundred dollars (\$1,500.00) per annum payable monthly.

Legislation. Sec. 4012-D. Sec. 4 of Act of 1911, cited under § 4012-A.

4012-E. Appropriation.

SEC. 28e. That there be and is hereby appropriated annually as a continuing appropriation out of any money in the state treasury not otherwise appropriated, for the purpose of paying the salaries and expense provided for in section 4 of this act, the

Secs. 4012-E.-4012-F. COLORADO STATUTES ANNOTATED. Chap. 83

sum of twelve thousand dollars (\$12,000.00) or so much thereof as may be necessary.

Legislation. Sec. 4012-E. Sec. 5 of Act of 1911, cited under § 4012-A.

4012-F. Oath of office—Bond.

SEC. 28f. That each of said state license inspectors shall file with the state treasurer his oath of office and his official bond in the penal sum of not less than five thousand dollars (\$5,000.00), conditioned upon the faithful performance of his duties as said license inspector.

Legislation. Sec. 4012-F. Sec. 7 of Act of 1911, cited under § 4012-A. Sec. 6 was the repealing section and § 8 the Emergency Clause.

CHAPTER LXXXIV.

LIENS.

- I. LIEN ON PERSONAL PROPERTY.—4013-4024.
 - II. LIEN OF MECHANICS AND OTHERS.—4025-4060.
 - III. LIEN OF MINERS, MILL MEN AND OTHERS.—4060-A.-4060-H.
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I. LIEN ON PERSONAL PROPERTY.

Section.

- 4013. Lien for keeping animals—Inn-keeper's lien.
 - 4014. Lien of common carrier on goods and baggage.
 - 4015. Lien for work done on personal property.
 - 4016. Lienor apply to justice of the peace—Appraisers.
 - 4017. Appraisers sworn—Return separate values.
 - 4018. Lienor may sell—Ten days' notice—How given—Costs—Residue.
 - 4019. No sale for less than two-thirds appraised value.
 - 4020. Lienor may purchase.
 - 4021. Sale may be adjourned—Sale bill—Justice make record.
 - 4022. Lien no bar to suit for charges.
 - 4023. Lienor may appoint clerk of sale.
 - 4024. Fees for appraisers, justices, clerks and criers.
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4013. Lien for keeping animals—Inn-keeper's lien.

SECTION 1. Any ranchman, farmer, agistor, herder of cattle, tavern keeper, livery stable keeper, or other person to whom any horses, mules, asses, cattle, sheep or hogs shall be entrusted for the purpose of feeding, herding, pasturing, keeping or ranching, shall have a lien upon such horses, mules, asses, cattle, sheep or hogs, for the amount that may be due for such feeding, herding, pasturing, keeping or ranching, and for all costs incurred in enforcing such

[Attorney's lien. Section 242.]

lien. The keeper of any hotel, tavern, or boarding house, or any person who rents furnished or unfurnished rooms, shall have a lien upon the baggage and furniture of his or her patrons, boarders, guests or tenants, for such boarding, lodging or rent, and for all costs incurred in enforcing such lien; *Provided*, That the provisions of this section shall not apply to stolen stock.

[Penalty for keeper using horse, etc. Section 2069.]

[Lien on get. Sections 6545 and 6546.]

[For inn-keeper's lien see also section 3006.]

Legislation. Sec. 4013. Act 1889 p. 232 § 1, amending G. S. § 2118. Act 1883 p. 237 § 1, entitled:

AN ACT

To Secure to Ranchmen, Tavern Keepers and Other Persons, Liens on Personal Property.

Sec. 1 of Act of 1883 read:

Section 1. That any ranchman, farmer, agistor or herder of cattle, tavern keeper or livery stable keeper, to whom any horses, mules, asses, cattle or sheep, shall be intrusted for the purpose of feeding, herding, pasturing or ranching, shall have a lien upon such horses, mules, asses, cattle or sheep, for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle or sheep, until the said amount is paid; and every hotel, tavern, boarding house keeper, and person who rents furnished rooms, shall have a lien upon the baggage of his or her patrons, boarders, and guests, for the amount that may be due from such patrons, boarders, guests or tenants, for such boarding, lodging or rent, and they are hereby authorized to hold and retain possession of such baggage until the amount so due for boarding, lodging or rent, or either, is paid; *Provided* that the provisions of this section shall not apply to stolen stock.

Said Act of 1883 was the re-enactment of G. L. § 1640, which was the re-enactment of § 1 of Art. III., R. S. p. 435, as amended by Act of 1876 p. 90.

The original Act was 1861 p. 350 §§ 1-2. Sec. 2 was repealed by Act of 1862, p. 83. Its provisions were practically covered by the proviso to Sec. 1, which still appears in the text. The original Act was confined to liens on stock, and the amendment of 1876 gave the lien to hotels.

The section was substituted by Act of 1881 p. 176 § 1, but the above cited Act of 1883 returned substantially to the original reading.

CITATIONS.

A livery stable keeper who was also an innkeeper and who failed to show that the owner of horses which he cared for was his guest could not set up a lien at common law. The act of 1881 was obnoxious to the constitution.—*Wall v. Garrison*, 11 C. 517, 19 P. 570.

CITATIONS CONTINUED.

The lien of an agistor is superior to that of a mortgage taken with knowledge of the situation of the stock.—*Tabor v. Salisbury*, 3 A. 336, 33 P. 190.

A landlord of a partly furnished room had a lien upon the furniture placed there by the tenant.—*Albers v. Turley*, 10 A. 451, 51 P. 530.

Section 3628 which exempts property from levy does not exempt it from a landlord's lien.—*Noxon v. Glaze*, 11 A. 504, 53 P. 828.

This section does not give to the lessor of an office-room a lien on his tenant's furniture for the rent of the office.—*Morse v. Morrison*, 16 A. 451, 66 P. 169.

4014. Lien of common carrier on goods and baggage.

SEC. 2. Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey or transport the same from one place to another; and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall in like manner have a lien upon all such personal property for his reasonable charges for the transportation, storage or keeping thereof, and for all reasonable and proper advances made thereon by him, in accordance with the usage and custom of common carriers and warehousemen.

Legislation. Sec. 4014. R. S. p. 435 § 2. G. L. § 1641. Re-enacted by § 2 of Act of 1883 p. 237. G. S. § 2119.

4015. Lien for work done on personal property.

SEC. 3. Any mechanic or other person, who shall make, alter, repair or bestow labor upon any article of personal property, at the request of the owner of such personal property, or his or her agent, shall have a lien upon such property for the amount due for such labor done or material furnished, and for all costs incurred in forcing such lien.

Legislation. Sec. 4015. R. S. p. 435 § 3. G. L. § 1642. Amended by § 3 of Act of 1883 p. 237. G. S. § 2120. Amended by § 2 of Act of 1889 p. 233.

Before amendment the section read:

Sec. 3. Any mechanic or other person who shall make, alter, repair, or bestow labor upon any article of personal property, for the improvement thereof, at the request of the owner of such personal property, or of the materials from

which the same is made, shall, in like manner, have a lien upon such articles of personal property for his reasonable charges for the labor performed and materials furnished and used in such making alteration, repair or improvement.

CITATIONS.

One is not entitled to a lien unless he retains possession of the property upon which the labor was bestowed.—*Wenz v. McBride*, 20 C. 196, 36 P. 1105.

A tailor to whom cloth has been delivered to be made into garments is a mechanic.—*Hillsburg v. Harrison*, 2 A. 298, 30 P. 355.

4016. Lienor apply to justice of the peace—Appraisers.

SEC. 4. If any such charges for which a lien is given by the three preceding sections be not paid within thirty days after the same becomes due and payable, the mechanic, inn-keeper, agistor, or other persons to whom such lien is given as aforesaid, may apply to any justice of the peace of the county wherein he resides to appoint appraisers to appraise the several articles of personal property whereon such lien is claimed. Such justice shall thereupon appoint, by warrant under his hand, three reputable householders of the county, not interested in the matter, to appraise such personal property.

Legislation. Sec. 4016. R. S. p. 435 § 4. G. L. § 1643. Re-enacted by § 4 of Act of 1883 p. 238. G. S. § 2121.

CITATIONS.

This section cited in holding that property exempt from levy is not exempt from a landlord's lien.—*Noxon v. Glaze*, 11 A. 504, 53 P. 828.

4017. Appraisers sworn—Return separate values.

SEC. 5. The appraisers so appointed shall be sworn by the justice to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return their appraisement, wherein shall be set down each article separately, to the justice by whom they were appointed, within ten days after their appointment.

Legislation. Sec. 4017. R. S. p. 435 § 5. G. L. § 1644. Re-enacted by § 5 of Act of 1883 p. 238. G. S. § 2122.

CITATIONS.

This section cited in holding that property exempt from levy is not exempt from a landlord's lien.—*Noxon v. Glaze*, 11 A. 504, 53 P. 828.

4018. Lienor may sell—Ten days' notice—How Given—Costs—Residue.

SEC. 6. After such appraisement is made, the person to whom such lien is given by the foregoing sections may after giving ten days' prior notice of the time and place of such sale, with a description of the property to be sold, by publication in some newspaper published in the county wherein he resides (or if there be no such newspaper, then by posting in three public places within such county) and delivering to the owner of such personal property, or if he do not reside in the county, transmitting by mail to him at his usual place of abode, if known, a copy of such notice, proceed to sell all such personal property, or so much thereof as may be necessary, at public auction, for cash in hand, at any public place within such county, between the hours of ten a. m. and four p.m. of the day appointed; and from the proceeds thereof may pay the reasonable costs of such appraisement, notice and sale, and his reasonable charges for which he has his lien, together with the reasonable cost of keeping such property up to the time of sale. The residue of the proceeds and of the property unsold he shall render to the owner.

Legislation. Sec. 4018. R. S. p. 436 § 6. G. L. § 1645. Re-enacted by § 6 of Act of 1883 p. 238. G. S. § 2123.

CITATIONS.

This section cited in holding that property exempt from levy is not exempt from a landlord's lien.—*Noxon v. Glaze*, 11 A. 504, 53 P. 828.

4019. No sale for less than two-thirds appraised value.

SEC. 7. No such sale shall be made for less than two-thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section. Every such sale made in violation of the provisions of this section shall be absolutely void.

Legislation. Sec. 4019. R. S. p. 436 § 7. G. L. § 1646. Re-enacted by § 6 of Act of 1883 p. 238. G. S. § 2124.

4020. Lienor may purchase.

SEC. 8. At such sale the person to whom such lien is given may become the purchaser.

Legislation. Sec. 4020. R. S. p. 436 § 7. G. L. § 1647. Re-enacted by § 7 of Act of 1883 p. 238. G. S. § 2125.

4021. Sale may be adjourned—Sale bill—Justice make record.

SEC. 9. In any case where the property to be sold cannot conveniently be sold in one day the sale may be continued from day to day by public outcry at the place of sale. Upon the completion of such sale, the person to whom the lien is given hereby, shall cause a sale bill thereof to be filed with the justice of the peace before whom such appraisalment was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such sale bill in his docket, and preserve the original thereof, together with the appraisalment.

Legislation. Sec. 4021. R. S. p. 436 § 8. G. L. § 1648. Re-enacted by § 8 of Act of 1883 p. 238. G. S. § 2126.

4022. Lien no bar to suit for charges.

SEC. 10. Nothing in this act shall be so construed as to take away the right of action of the party to whom such lien is given, for his charges, or for any residue thereof, after sale of such property.

Legislation. Sec. 4022. R. S. p. 436 § 9. G. L. § 1649. Re-enacted by § 9 of Act of 1883 p. 238. G. S. § 2127.

4023. Lienor may appoint clerk of sale.

SEC. 11. At such sale the person to whom such lien is given, as herein provided, may appoint a clerk and crier.

Legislation. Sec. 4023. R. S. p. 436 § 10. G. L. § 1650. Re-enacted by § 10 of Act of 1883 p. 238. G. S. § 2128.

4024. Fees of appraisers, justices, clerks and criers.

SEC. 12. Appraisers appointed under the provisions of this act shall receive one dollar per day; justices of the peace shall re-

ceive for each warrant of appraisement, fifty cents; for receiving and recording each appraisement, twenty cents for one hundred words, and the like fees for recording each sale bill. Clerks and criers at sales made under the provisions hereof, shall receive each one dollar per day.

[The above twelve sections were followed by a repeal and saving clause.]

[For lien on personal property for taxes see section 5677.]

[Lien for care of animal taken care of by humane society. Section 1920.]

Legislation. Sec. 4024. R. S. p. 437 § 11. G. L. § 1651. Re-enacted by § 11 of Act of 1883 p. 238. G. S. § 2129.

II. LIEN OF MECHANICS AND OTHERS.

Section.

- 4025. Lien in favor of whom—Contract—Recorded.
- 4026. Payments—Notice by sub-contractor—Effect.
- 4027. To what land lien attaches—Enforcement—Two buildings.
- 4028. Mining property subject to lien.
- 4029. Property subject to lien—Notice by owner.
- 4030. Priority of lien—Attachments.
- 4031. Lien attaches to water rights and franchises.
- 4032. Rank of liens.
- 4033. Lien statement—Contents—Notice to owner—Time to file—Completion.
- 4034. Action to enforce lien shall commence within six months.
- 4035. Joinder of parties—Consolidation of actions.
- 4036. Allegations of complaint—Amendment of pleadings.
- 4037. Advancement of cause—Referee—Judgment pro rated—Decree—Publication of summons.
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II. LIEN OF MECHANICS AND OTHERS.

Continued.

Section.

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4025. Liens in favor of whom—Contract—Recorded.

SEC. 13. Mechanics, material men, contractors, sub-contractors, builders, and all persons of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway or any other structure or improvement, upon land, and also architects, engineers, draughtsmen and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures for the value of such services rendered or labor done or material furnished, whether at the instance of the owner, or of any other person acting by his authority or under him, as agent, contractor, or otherwise; for the work or labor done or services rendered or materials furnished, by each respectively, whether done or furnished or rendered at the instance of the owner of the building or other improvement, or his agent; and every contractor, architect, engineer, sub-contractor, builder, agent or other person having charge of the construction, alteration, addition to, or repair, either in whole or in part,

of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purposes of this act.

In case of a contract for the work, between the reputed owner and a contractor, the lien shall extend to the entire contract price and such contract shall operate as a lien in favor of all persons performing labor or services or furnishing materials as herein provided under contract, express or implied, with said contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of such contract price in favor of the contractor. All such contracts shall be in writing when the amount to be paid thereunder exceeds five hundred dollars, and shall be subscribed by the parties thereto, and the said contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the total amount to be paid thereunder, together with the times or stages of the work for making payments, shall, before the work is commenced, by the owner or reputed owner be filed in the office of the county recorder of the county where the property, or the principal portion thereof, is situated; and in case such contract is not filed, as above provided, the labor done and materials furnished by all persons aforesaid before such contract or memorandum is filed, shall be deemed to have been done and furnished at the personal instance of the owner, and they shall have a lien for the value thereof.

Legislation. Sec. 4025. Act 1899 p. 261 § 1, entitled:

AN ACT

To Secure Liens to Mechanics and Others and to Repeal an Act Entitled "An Act to Secure Liens to Mechanics and Others, and to Repeal All Laws in Conflict Therewith," Approved April 3, 1893, and All Other Acts and Parts of Acts in Conflict Herewith.

A mechanic's lien Act was passed at the first session of the Colorado legislature and it has been repeatedly amended. The Acts of 1864, 1867, 1872, 1883 and 1893 each purported to be a revision or codification of the mechanic's lien law up to the date of its passage. But the detail and arrangement of each codification was different from the others, and it is therefore impossible to collate the amendments section by section.

The enumeration of persons entitled to a lien is substantially the same in all of the Acts. The sections giving these recitals in the repealed Acts are: 1861 p. 268 §§ 1, 2; 1862 p. 79 § 1; 1864 p. 102 § 1; 1867 p. 75 § 1; R. S. p. 428 § 1; 1872 p. 147 § 1; 1876 p. 87 § 1; G. L. §§ 1652 1654, Act of 1883 p. 225 §§ 1-8; G. S. §§ 2131-2138. Act of 1893 p. 315 § 1.

The exact enumeration of claimants as contained in the opening lines of the text are first found in the Act of 1893. And the text section is substantially a copy of § 1 Act 1893 p. 315.

CITATIONS.

Prior to November 4, 1861, a party could not have a lien upon the premises benefited.—*Townsend v. Wild*, 1 C. 11. *Purmort v. Tucker Lumber Co.*, 2 C. 470.

Liens existing under the act of 1864 fell when that act was repealed unless within the saving clause of the act of 1867.—*Woodbury v. Grimes*, 1 C. 101.

The chancery practice was to be observed in mechanics' lien cases under R. S. 1868.—*Clear Creek etc. Co. v. Root*, 1 C. 374.

Rights of a subcontractor under the act of 1872 for materials furnished by him.—*Jensen v. Brown*, 2 C. 695.

The legal effect of the act of 1872 was to give a lien from the date the labor was commenced or the first of the materials furnished.—*Mellor v. Valentine*, 3 C. 258. *Keystone M. Co. v. Gallagher*, 5 C. 28.

The moiety of a co-tenant who improves a common estate is liable for the whole value of the improvements.—*Mellor v. Valentine*, 3 C. 260.

A lien did not lie under the act of 1872 for hauling ores from a mine to a quartz-mill.—*Barnard v. McKenzie*, 4 C. 251.

Three publications of the notice was a compliance with the act of 1872.—*Decker v. Myles*, 4 C. 558.

Proceedings under the mechanics' lien law are in their nature equitable.—*San Juan etc. Co. v. Finch*, 6 C. 215. *Williams v. Uncompahgre C. Co.*, 13 C. 478, 22 P. 806.

The expression "due or to become due under the contract" used in the laws of 1877 construed.—*Tabor v. Armstrong*, 9 C. 287, 12 P. 158.

The mechanics' lien statutes are to be construed liberally in favor of the classes sought to be protected.—*Rara Avis G. M. Co. v. Bouscher*, 9 C. 387, 12 P. 434.

The lien is superior to all after acquired liens and to prior liens of which the mechanic had no notice.—*Tritch v. Norton*, 10 C. 349, 15 P. 687.

A deed, if in effect a mortgage, was a prior lien when work was commenced after it was recorded.—*Folsom v. Cragen*, 11 C. 208, 17 P. 517.

It is sufficient if the contract be either expressed or implied and with an authorized agent on behalf of the owner.—*Williams v. Uncompahgre C. Co.*, 13 C. 479, 22 P. 806.

CITATIONS CONTINUED.

The statute being equitable in purpose and remedial in nature is to receive liberal construction, but there must be a substantial compliance with all material requirements.—*Cannon v. Williams*, 14 C. 23, 23 P. 457. *Rico R. & M. Co. v. Musgrave*, 14 C. 81, 23 P. 459.

A purchaser is chargeable with notice of a mechanics' lien without the filing of a lis pendens.—*Empire L. & C. Co. v. Engley*, 18 C. 397, 33 P. 157.

The law in force at the time lien rights accrued, and not amendments thereto, must govern.—*Spangler v. Green*, 21 C. 508, 42 P. 675.

A plaintiff may at any time before judgment abandon his lien claim and proceed by judgment.—*Eagle G. M. Co. v. Bryarly*, 28 C. 262, 65 P. 52.

The constitutionality of the lien act of 1893 attacked, but the question not determined.—*Joralmou v. McPhee*, 31 C. 36, 71 P. 419.

Where an owner sued a surety to recover an amount which the owner paid in excess of the contract price, on a lien judgment, it was no defence that the owner had not recorded the contract.—*Ripley Bldg. Co. v. Coors*, 37 C. 81, 85, 84 P. 817.

When materials are placed upon the ground for use a lien attaches and the person for whom the building is being erected, although he may not be personally liable for their value, becomes a qualified owner thereof.—*Rice v. Cassell*, 48 C. 72, 108 P. 1002.

Rights of a sub-contractor where the contractor abandoned his contract and the owner completed the work, having been paid by the sureties of the contractor.—*Rice v. Rhone*, (May 1910), 111 P. 587.

The right of a material man to claim and hold a lien must be maintained by proof bringing it directly within the statute.—*Groth v. Stahl*, 3 A. 9, 30 P. 1051.

An assignee of a laborer's claim is required to make specific proof of the sum due his assignor.—*Hanna v. Savings Bank*, 3 A. 33, 31 P. 1021.

A sub-contractor under the act of 1889 could acquire no greater rights than flowed to him under the contract with the owner.—*Ditto v. Jackson*, 3 A. 282, 33 P. 81.

The constitutionality of the act of 1889 not considered because not raised in the court below.—*Rice v. Carmichael*, 4 A. 88, 24 P. 1011. *Miller v. Thorpe*, 4 A. 561, 36 P. 891.

The provisions of the mechanics' lien law cannot be applied to public school buildings.—*Florman v. School Dist.*, 6 A. 320, 40 P. 469.

CITATIONS CONTINUED.

The lien is restricted to the land of the contracting owner or his interest in it at the time of making the contract.—*Johnson v. Bennett*, 6 A. 366, 40 P. 848.

Lien claimants have no interest in a fund provided by the principal contractor for the purpose of protecting the owner against liens.—*Sayre-Newton L. Co. v. Union Bank*, 6 A. 541, 41 P. 846.

The provisions of the act of 1893 relating to statements are not applicable to contracts and liens which had their inception prior to the time that act took effect.—*Small v. Foley*, 8 A. 436, 47 P. 65. *Chicago Lumber Co. v. Dillon*, 13 A. 201, 56 P. 990.

The words "building" and "structure" should be given a singular or plural signification as the circumstances require.—*Small v. Foley*, 8 A. 436, 47 P. 65.

A superintendent of the construction of a building is entitled to a lien.—*Fischer v. Hanna*, 8 A. 471, 47 P. 303.

The assignee of a lease had such an interest in the land as was subject to a lien.—*Cary Hardware Co. v. McCarty*, 10 A. 206, 50 P. 746.

A mortgagee is not required to make himself a party to an action in order to protect his mortgage lien.—*Bitter v. Mouat L. & I. Co.*, 10 A. 308, 51 P. 519.

Under the lien statute where it is sought to make one person liable for the debt of another the statute must be strictly construed.—*Maher v. Shull*, 11 A. 325, 52 P. 1116.

Where one purchased property after material was delivered, and gave a bond to release a lien no personal judgment could be rendered against him.—*Burleigh Bldg. Co. v. Mercant B. & B. Co.*, 13 A. 455, 59 P. 84.

Clauses of the contract purporting to prohibit the contractor from asserting a lien should be strictly construed and if doubtful should be construed in favor of the lien.—*Aste v. Wilson*, 14 A. 324, 59 P. 847.

A lien not allowed for placing a furnace in a completed house.—*Michael v. Reeves*, 14 A. 462, 60 P. 578.

To support a lien under a contract the contract must be made with the owner. After acquired ownership will not entitle a party to a lien.—*Griffin v. Seymour*, 15 A. 487, 3 P. 810.

Facts under which an original contract and subsequent letters formed but one continuous contract.—*Erkins v. Boyd*, 16 A. 267, 65 P. 351.

The statute must be strictly construed in determining whether or not the right to a lien exists. A mining expert and

CITATIONS CONTINUED.

geologist is not entitled to a lien.—*Lindemann v. Belden Cons. M. Co.*, 16 A. 344, 65 P. 404.

The fact that no disposition was made of a case as to a contractor did not affect the validity of a personal judgment against the owner.—*Harris v. Harris*, 18 A. 36, 69 P. 309.

A lien cannot be maintained against the owner for materials furnished the contractor in his own name. The date of the contract fixes the law under which claimant must proceed. Under the act of 1893 filing a statement before completion of the building was premature and of no effect.—*Tabor-Pierce L. Co. v. Int. Trust Co.*, 19 A. 111, 75 P. 151.

A lien can not be established against city or town lots for the construction of a sidewalk.—*Fleming v. Prudential Ins. Co.*, 19 A. 129, 73 P. 753.

The act of 1893 held constitutional and that the statute should be liberally construed.—*Chicago Lumber Co. v. Newcomb*, 19 A. 268, 74 P. 787.

The superintendence of the construction of a building gives the right to a lien. What work amounts to superintending the construction considered.—*Pitschke v. Pope*, 20 A. 330, 78 P. 1077.

4026. Payments—Notice by sub-contractor—Effect.

SEC. 14. No part of the contract price, shall, by the terms of any such contract, be made payable, nor shall the same, or any part thereof, be paid, in advance of the commencement of the work, but the contract price shall, by the terms of the contract, be made payable in installments, or upon estimates, at specified times after the commencement of the work, or on the completion of the whole work; *Provided*, That at least fifteen per cent. of the whole contract price shall be made payable at least thirty-five days after the final completion of the contract.

No payment made prior to the time when the same is due, under the terms and conditions of the contract, shall be valid for the purpose of defeating, diminishing or discharging any lien in favor of any person, except the contractor, or other person to or for whom the payment is made, but as to such liens, such payment shall be deemed as if not made, and shall be applicable to such liens, notwithstanding that the contractor or other person to or for whom it was paid may thereafter abandon

his contract, or be or become indebted to the reputed owner in any amount for damages or otherwise, for nonperformance of his contract or otherwise. As to all liens, except those of principal contractors, the whole contract price shall be payable in money, and shall not be diminished by any prior or subsequent indebtedness, offset or counter claim, in favor of the reputed owner and against the principal contractor, and no alteration of such contract shall affect any lien acquired under the provisions of this act. In case such contracts and alterations thereof do not conform substantially to the provisions of this section, the labor done and materials furnished by all persons other than the principal contractor shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the principal contractor, and they shall have a lien for the value thereof. Any of the persons mentioned in section 1, except a principal contractor, may at any time give to the owner or reputed owner or to his superintendent of construction, agent or architect, a written notice that they have performed labor or furnished materials or both to or for a principal contractor, or any person acting by authority of the owner or reputed owner, or that they have agreed to and will do so, stating in general terms the kind of labor or materials and the name of the person to or for whom the same was or is to be done or performed, or both, and the estimated or agreed amount in value, as near as may be, of that already done or furnished or both, and also of the whole agreed to be done or furnished, or both. Such notice may be given by delivering the same to the owner or reputed owner personally, or by leaving it at his residence or place of business with some person in charge; or by delivering it either to his superintendent of construction, agent or architect, or by leaving it either at their residence or place of business, with some person in charge; no such notice shall be invalid or insufficient by reason of any defect of form, provided it is sufficient to inform the owner or reputed owner of the substantial matters herein provided for, or to put him upon inquiry as to such matters. Upon such notice being given, it shall be the duty of the person who contracted with the principal contractor, to, and he shall, withhold from such principal contractor, or from any other person acting under such owner or reputed owner, and to

whom, by said notice, the said labor or materials, or both, have been furnished or agreed to be furnished, sufficient money due or that may become due, to said principal contractor, or other persons, to satisfy such claim, and any lien that may be filed therefor for record under this chapter, including reasonable costs provided for in this act; and the payment of any such lien, which shall have been acknowledged by such principal contractor, or other person acting under such owner or reputed owner, in writing to be correct, or which shall have been established by judicial determination, shall be taken and allowed as an offset against any moneys which may be due from the owner, or reputed owner to such principal contractor, or the person for whom such work and labor was performed.

[Section 1 above referred to is section 4025.]

Legislation. Sec. 4026. Act 1899 p. 263 § 2, cited under § 4025.

It follows substantially the wording of the Act of 1893 § 2 p. 316, but introduces the word "principal" before the word "contractor" in several instances, so as to make a distinction between the principal and other contractors.

CITATIONS.

Right of owner to set off against contractor for sub-contractor's claims under act of 1899.—*U. P. Ry. Co. v. Davidson*, 21 C. 94, 39 P. 1096.

The lien act puts a limitation upon the common law right of the owner to pay his debts and compels him to pay them to a contractor, sub-contractor or material man.—*Mouat Lumber Co. v. Gilpin*, 4 A. 535, 36 P. 893.

A lien claimant is not required to see that material furnished by contract with the owner of the building is actually used in its construction.—*Small v. Foley*, 8 A. 436, 47 P. 65.

Where it is sought to make one person liable for the debt of another the statute must be strictly construed.—*Maher v. Shull*, 11 A. 326, 52 P. 1116.

An owner can not justify himself in paying over the 15 per cent. required to be retained, by reason of the contractor's covenants that he would not suffer any liens to be asserted.—*Aste v. Wilson*, 14 A. 333, 59 P. 849.

The act of 1893 prescribing the form of contract was not repugnant to the constitution. Making the contractor the agent of the owner did not invalidate the statute. The title of the act was sufficient to embrace other persons than mechanics.—*Chicago Lumber Co. v. Newcomb*, 19 A. 269, 74 P. 787.

4027. To what land lien attaches—Enforcement—Two buildings.

SEC. 15. The liens granted by this act shall extend to and cover so much of the lands whereon such building, structure or improvement shall be made as may be necessary for the convenient use and occupation of such building, structure or improvement, and the same shall be subject to such liens; and in case any such building shall occupy two or more lots, or other subdivisions of land, such several lots or other subdivisions, shall be deemed one lot for the purposes of this act, and the same rule shall hold in cases of any other such improvements that shall be practically indivisible, and shall attach to all machinery and other fixtures used in connection with any such lands, buildings, mills, structures or improvements. When the lien is for work done or material furnished for any entire structure, erection or improvement, such lien shall attach to such building, erection or improvement for or upon which such work was done, or materials furnished, in preference to any prior lien or encumbrance, or mortgage upon the land upon which the same is erected, or put, and any person enforcing such lien may have such building, erection or improvement sold under execution and the purchaser at any such sale may remove the same within thirty days after such sale; and any lien provided for by this act shall extend to and embrace any additional or greater interest in any of such property acquired by such owner at any time subsequent to the making of the contract or the commencement of the work upon such structure and before the establishment of such lien by process of law; and shall extend to any assignable, transferable or conveyable interest of such owner or reputed owner in the land upon which such building, structure or other improvement shall be erected or placed. That whenever any person or persons shall hereafter furnish any materials or perform any labor, or both, for the erection, construction, addition to, alteration or repair of two or more buildings, structures or other improvements, when they are built and constructed by the same person or persons, and under the same contract, it shall be lawful for the person or persons so furnishing such materials, or performing such labor, to divide and apportion the same among the said buildings, structures, or other improvements in propor-

tion to the value of the materials furnished for, and the labor performed upon or for each of said buildings, structures or other improvements and to file with his, her or their lien claim therefor, a statement of the amount so apportioned to each building, structure or other improvement, which said lien claim when so filed may be enforced under the provisions of this act in the same manner as if said materials had been furnished and labor performed for each of said buildings, structures or other improvements separately;* but if the cost or value of such labor and materials, or either, cannot be readily and definitely divided and apportioned among the said several buildings, structures or other improvements, then one lien claim may be made, established and enforced against all such buildings, structures or other improvements, together with the ground upon which the same may be situated, and in such case, for the purposes of this act, all such buildings, structures and improvements shall be deemed one building, structure or improvement, and the land on which the same are situated as one tract of land.

Legislation. Sec. 4027. Act 1899 p. 265 § 3.

It follows substantially the language of § 7, Act 1893 p. 320, down to the star at which the 1893 Act ends.

CITATIONS.

Where a contractor built a house on the wrong lots he had no lien on the land. A trust deed given upon a subsequent purchase of the lots by the owner of the house was prior to a mechanic's lien.—*Tritch v. Norton*, 10 C. 349, 15 P. 687.

A lien for the construction of a flume was superior to the lien of a mortgage on the entire property although the mortgage provided for a lien upon subsequently acquired property.—*Jarvis v. State Bank*, 22 C. 315, 45 P. 507.

Where parties have notice of the existence of a mortgage given for the purpose of securing funds to construct an improvement their right must be held subordinate to that of the mortgage.—*Jorammon v. McPhee*, 31 C. 33-35, 71 P. 421.

It was unnecessary for claimants to either allege or prove upon what portion of the railroad the material was used; the law gives them a lien upon the entire structure.—*Barnes v. Colo. Springs etc. Ry. Co.*, 42 C. 470, 94 P. 573.

The lien for work done in the construction of an entire building on unimproved property is, as to the structure, superior to

CITATIONS CONTINUED.

that of a prior deed of trust.—*Church v. Smithea*, 4 A. 177, 35 P. 268.

Where several buildings are to be erected for a common use they are to be treated as one building. The phrase "all machinery and other fixtures" held to include matte pots and certain other articles used in a smelter.—*Cary Hardware Co. v. McCarty*, 10 A. 220, 50 P. 744.

A lien for improvements upon a mill site would not extend to the mining claim owned in connection therewith.—*Colo. Iron Works v. Taylor*, 12 A. 460, 55 P. 942.

4028. Mining property subject to lien.

SEC. 16. The provisions of this act shall apply to all persons who shall do work or shall furnish materials or mining, milling or other machinery or other fixtures, as provided in section 1 of this act, for the working, preservation, prospecting or development of any mine, lode or mining claim or deposit yielding metals or minerals of any kind or for the working, preservation or development of any such mine, lode or deposit, in search of any such metals or minerals; and to all persons who shall do work upon or furnish materials, mining, milling or other machinery or other fixtures, as provided in section 1 of this act, upon, in or for any shaft, tunnel, mill or tunnel site, incline adit, drift or any draining or other improvement of or upon any such mine, lode, deposit or tunnel site; *Provided*, That when two or more lodes, mines or deposits owned or claimed by the same person or persons shall be worked through a common shaft, tunnel, incline, adit, drift or other excavation, then all the mines, mining claims, lodes, deposits and tunnel and mill sites so owned and worked or developed shall, for the purpose of this act, be deemed one mine; *And, provided further*, That this section shall not be deemed to apply to the owner or owners of any mine, lode, deposit, shaft, tunnel, incline, adit, drift or other excavation, who shall lease the same in small blocks of ground in areas, whether of surface or beneath the surface, not to exceed 150 feet in length by the width of the claim and for a depth of 150 feet or less to one or more sets of lessees.

[Section 1 above referred to is section 4025.]

Legislation. Sec. 4028. Act 1899 p. 266 § 4, cited under § 4025.

It follows the general frame of Act of 1895 p. 202 § 1, amending Act 1893 p. 321 § 8. The substantial amendment was the proviso introducing the phrase "small blocks of ground." That phrase is retained in the text, but with different context defining the limits of the small blocks of ground. As it read in the Act of 1895 it was probably too indefinite to be enforced. The proviso of 1893 p. 321 § 8 denied lien against the mine in favor of lessees generally, as did also the proviso to the amendment of 1891 p. 260 § 1 and the proviso to § 7 Act 1883 p. 227, G. S. § 2137 and G. L. § 1655, which was Act 1872 p. 149 § 4.

The Act of 1867 p. 81 § 1, R. S. p. 434 § 1, gave a lien to miners without limitation as to the amount, but they had no lien under the prior Acts of 1861 p. 258 and 1864 p. 102. The 1867 Act gave lien to miners working for lessees, but that clause was stricken out by Act 1870 p. 81 § 1.

The Act of 1872 p. 149 gave a lien to miners doing work to the extent of \$25.00.

The Act of 1889 p. 248 § 2, amending said G. S. § 2137 allowed a lien in favor of the lessee's employes not having knowledge that the mine was worked under lease, and contained complicated provisions as to notice to be posted and recorded. This Act was superseded by the Act of 1893 above cited.

CITATIONS.

Under the laws of 1872 a lien did not lie for hauling ores from a mine to a quartz mill.—*Barnard v. McKenzie*, 4 C. 251.

Services rendered in planning and superintending development work upon mines and the erection of a mill and machinery were within the statute.—*Rara Avis etc. M. Co. v. Bouscher*, 9 C. 386, 12 P. 434.

One performing work on a mine after a mortgage was recorded was not entitled to a lien as against the mortgage.—*Folsom v. Cragen*, 11 C. 208, 17 P. 517.

A lien did not attach under the act of 1895 against the mine when the work done or material furnished was for a lessee.—*Wilkins v. Abell*, 26 C. 464, 58 P. 612. *Schweizer v. Mansfield*, 14 A. 236, 59 P. 843. *Morrell Hardware Co. v. Princess G. M. Co.*, 16 A. 57, 63 P. 807.

Where a lease and option was given and the option did not require any work to be done the mine was not subject to a lien for work done under the lease.—*Williams v. Eldora-Enterprise Co.*, 35 C. 127, 83 P. 780.

A lien could not be claimed under the act of 1889 for work done upon a mine prior to the passage of the act.—*Gardner v. Resumption M. & S. Co.*, 4 A. 272, 35 P. 675.

Where one did work on a mine under a contract to receive a half interest he was not the owner or reputed owner or agent of the owner as contemplated by the act of 1893.—*Maher v. Shull*, 11 A. 322, 52 P. 1115.

One employed simply as a custodian to see that mining property was not destroyed was not entitled to a lien.—*Griffin v. Seymour*, 15 A. 489, 63 P. 810.

CITATIONS CONTINUED.

A mining expert and geologist is not entitled to a lien on a mine for exploring and examining it and reporting thereon.—*Lindemann v. Belden Cons. M. Co.*, 16 A. 345, 65 P. 403.

4029. Property subject to lien—Notice by owner.

SEC. 17. Any building, mill, manufactory, bridge, ditch, flume, aqueduct reservoir, tunnel, fence, railroad, wagon road, tramway and every structure or other improvement mentioned in the preceding sections of this act, constructed, altered, added to, removed to or repaired, either in whole or in part, upon or in any land, with the knowledge of the owner or reputed owner of such land, or if any person having or claiming an interest therein, otherwise than under a bona fide prior, recorded mortgage, deed of trust or other incumbrance, or prior lienor, shall be held to have been erected, constructed, altered, removed, repaired, or done at the instance and request of such owner or person, but so far only as to subject his interest to a lien therefor as in this section provided; and such interest so owned or claimed shall be subject to any lien given by the provisions of this act, unless such owner or person, shall, within five days after he shall have obtained notice of the erection, construction, alteration, removal, addition, repair or other improvement, aforesaid, give notice that his interests shall not be subject to any lien for the same, by serving a written or printed notice to that effect, personally, upon all persons performing labor or furnishing skill, materials, machinery or other fixtures therefor, or shall, within five days after he shall have obtained the notice aforesaid, or notice of the intended erection, construction, alteration, removal, addition, repair or other improvement aforesaid, give such notice as aforesaid by posting and keeping posted a written or printed notice to the effect aforesaid, in some conspicuous place upon said land or upon the building or other improvement situate thereon. *Provided*, That this section shall not apply to co-owners of unincorporated canals, ditches, flumes, aqueducts, and reservoirs not to the enforcement of chapter 116 of the session laws of Colorado of 1893; *And, provided, further*. That the provisions of this section shall not be construed to apply to any owner or person claiming any interest

in such property who shall have contracted for any erection, structure or improvement mentioned in this act.

[L. '93, chap. 116, will be found between sections 4051 and 4060.]
[See also sections 4049 and 4050.]

Legislation. Sec. 4029. Act 1899 p. 267 § 5, cited under § 4025.

The section consists of a single sentence with no period except where the first proviso begins. No equivalent to it is found in any of the preceding Acts. Its construction is turgid and almost, if not entirely, unintelligible. The only possible meaning we can see is, that if one tenant in common contract for building without the consent of his co-tenant, the co-tenant's interest will be bound unless he gives the notice called for. Or if a party having no right to contract for a building, nevertheless does so contract, the real owner will be bound unless he gives the notice.

All the words of the section preceding the word "if" have no grammatical connection with what follows.

CITATIONS.

The entire interest of a tenant in common who had signed an option of sale was subject to a lien for her failure to give the notice required by this section.—*Seely v. Neill*, 37 C. 202, 86 P. 335.

Where a complaint was uncertain as to whether plaintiff sought a lien against the record owner because of implied contract or because of failure to give the notice required by this section, the defendant by filing a general demurrer waived the defects.—*Gutshall v. Kornaley*, 38 C. 198, 88 P. 158.

A complaint which contains in one statement a cause of action against the owner upon express contract and a cause of action for failure to give notice under this section must state the causes of action separately.—*Hall v. Cudahy*, 46 C. 325, 104 P. 415.

4030. Priority of lien—Attachments

SEC. 18. All liens, established by virtue of this act shall relate back to the time of the commencement of work under the contract between the owner and the first contractor, or, if said contract be not in writing, then such liens shall relate back to and take effect as of the time of the commencement of the work upon the structure or improvement, and shall have priority over any and every lien or encumbrance subsequently intervening, or which may have been created prior thereto, but which was not then recorded, and of which, the lienor, under this act, did not have actual notice. Nothing herein contained, however, shall be construed as impairing any valid encumbrance upon any such land, duly made

and recorded prior to the signing of such contract, or the commencement of work upon such improvement or structure. No attachment, garnishment or levy under an execution upon any money due or to become due to a contractor from the owner, or reputed owner, of any such property, subject to any such lien, shall be valid as against such lien of a sub-contractor or material men, and no such attachment, garnishment or levy upon any money due to a sub-contractor or material men of the second class, as herein provided, from the contractor shall be valid as against any lien of a laborer employed by the day or piece, who does not furnish any material as herein classified.

Legislation. Sec. 4030. Act 1899 p. 268 § 6, cited under § 4025.

It follows the wording of § 4 Act 1893 p. 319, except that it introduces the word "first" before "contractor" in the 3rd line and adds the words "or to become due" after "money due" in the 15th line of the text. Sec. 19 Act of 1883 p. 231 G. S. § 2149 is of the same tenor. Under G. L. § 1658, which was Act 1872 p. 151 § 7, the mechanic's lien cut out any lien not recorded before work commenced or the first materials furnished, and that it has relation to such date seems to be the universal construction given to the mechanic's lien law.

CITATIONS.

A deed, though in effect a mortgage, recorded before a contract was made or work commenced would take precedence of the mechanic's lien.—*Folsom v. Cragen*, 11 C. 209, 17 P. 517.

A mortgagee has a lien on the land prior to a mechanic's lien, but ordinarily the mechanic's lien has priority over the mortgage on the building.—*Joralmon v. McPhee*, 31 C. 32, 71 P. 421.

A mechanic's lien has priority over a trust deed executed prior to and recorded after the commencement of work and of which the lienor had no notice.—*Small v. Foley*, 8 A. 437, 47 P. 65.

The title of a purchaser at a sale foreclosing a mechanic's lien is paramount to all incumbrances put upon the property after the commencement of the building.—*Cornell v. Lumber Co.*, 9 A. 230, 234, 47 P. 913.

4031. Lien attaches to water rights and franchises.

SEC. 19. Such liens shall likewise attach to rights of water and rights of way that may in any manner pertain to any kind of property hereinbefore specified and to which such liens attach. In case of corporations such liens shall attach to all the

franchises and charter privileges that may in any manner pertain to said specified property.

Legislation. Sec. 4031. Act 1899 p. 269 § 7, cited under 4025.

The 1893 Act p. 315 § 1 provided generally for liens on ditches, but had no section equivalent to 4031. But § 9 Act 1883 p. 228 was substantially the same as the text.

The last sentence of G. L. § 1654, which was Act 1872 p. 149 § 3, covered the same ground.

CITATIONS.

Where work was done on a canal it was sufficient if the contract was either expressed or implied and with an authorized agent on behalf of the owner.—*Williams v. Uncompahgre Canal Co.*, 13 C. 479, 22 P. 809.

4032. Rank of liens.

SEC. 20. Every person given a lien by this act whose contract, either express or implied, is with the owner or reputed owner or his agent or other representative, shall be a principal contractor and all others sub-contractors; and in every case in which different liens are claimed against the same property the rank of each lien, or class of liens, as between the different lien claimants, shall be declared and ordered to be satisfied in the decree or judgment in the following order named:

First—The liens of all those who were laborers or mechanics working by the day or piece, but without furnishing material therefor, either as principal or sub-contractors.

Second—The liens of all other sub-contractors and of all material men whose claims are either entirely or principally for materials, machinery or other fixtures, furnished either as principal or sub-contractors.

Third—The liens of all other principal contractors; and all funds realized in any and all actions for the satisfaction of liens against the same improvements or structures shall be paid out in the order above designated.

Legislation. Sec. 4032. Act 1899 p. 269 § 8, cited under 4025.

Sec. 5 Act 1893 p. 319, which the text superseded, read:

Sec. 5. In every case in which different liens are claimed against the same property the rank of each lien, or class of liens, as between the contractor and sub-contractors,

the acceptance by said owner or his agent of said building, improvement or structure, shall, for the purpose of this act, be deemed conclusive evidence of completion; and cessation from labor for thirty days upon any unfinished contract or upon any unfinished building, improvement or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof, for all the purposes of this act.

Legislation. Sec. 4033. Act of 1899 p. 269 § 9, cited under 4025.

The equivalent section Act 1893 § 3 p. 318 read:

Sec. 3. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement or structure, or after the completion of the alteration, addition to, or repair thereof, file for record with the county recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the terms and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself, or of some other person, and written notice of the intention to file such statement of lien must be given to the owner, his agent or architect, at least twenty-four hours before the same is filed.

Any trivial imperfection in the said work, or in the construction of any building, improvement or structure, or of the alteration, addition to, or repair thereof, shall not be deemed such lack of completion as to prevent the filing of any lien; and in case of contractors, the occupation or use of the building, improvement or structure, by the owner, or his representative, or any other person with the consent of the owner or his agent, or the acceptance by said owner or his agent of said building, improvement or structure, shall be deemed conclusive evidence of completion.

And cessation from labor for thirty days upon any unfinished contract or upon any unfinished building, improvement or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof for all the purposes of this chapter.

Act 1883 p. 228 §§ 10-12 G. S. §§ 2140-2142 prescribed two forms of statement, one for the contractor and the other for the sub-contractor. The time to file was limited to 60 days to the contractor and 40 days to the sub-contractor. G. L. § 1653 required the statement to be filed within 40 days. Sec. 2 Act 1872 p. 147. Sec. 1 of its amendatory Act, 1876 p. 87, gives the items of statement required at that time. Sec. 24 of the Act of 1867 p. 80 and § 29, Act 1861 p. 260, required no statement to be filed with the recorder. The mechanic began the proceedings by entering suit within six months. By Act 1864 p. 103 § 5 statement was to be recorded within 30 days.

CITATIONS.

The act of 1872 gave a lien to sub-contractors and others for not exceeding the amount due to the contractor.—*Jensen v. Brown*, 2 C. 697. *McIntire v. Barnes*, 4 C. 288.

Under the act of 1872 the contractor had forty days after completion instead of after materials furnished.—*Hart v. Mulen*, 4 C. 514.

An error in the description of the name of an addition would not, as to the owner, vitiate the lien.—*Martin v. Simmons*, 11 C. 414, 18 P. 535.

A failure to serve the statement required by the statute will not defeat the lien.—*Greeley etc. R. Co. v. Harris*, 12 C. 229, 20 P. 766.

A mere statement of the balance due was not a compliance with the act of 1883.—*Cannon v. Williams*, 14 C. 23, 23 P. 457.

Sufficiency of a statement, under the act of 1883, filed against several mining claims.—*Rico R. & M. Co. v. Musgrave*, 14 C. 81, 23 P. 459.

The filing of a notice is ample to give notice to purchasers without the filing of a lis pendens.—*Empire L. & C. Co. v. Engley*, 18 C. 392, 33 P. 155.

Under the act of 1889 service of notice could not be made upon a corporation by giving a copy to the clerk of the superintendent of the company.—*U. P. Ry. Co. v. Davidson*, 21 C. 94, 39 P. 1096.

Where there were several causes of action in a complaint one averment of service of notice and filing the statement was sufficient.—*Rialto M. & M. Co. v. Lowell*, 23 C. 254, 47 P. 264.

There is no cessation of labor if during the time any labor, whatever its character, is performed which is in furtherance of the completion of the building.—*Joralmon v. McPhee*, 31 C. 38, 71 P. 423.

A statement is sufficient notwithstanding it does not state in express terms that the materials were furnished by the claimant. A statement by an assignee must show that the materials were furnished by the assignor.—*Sickman v. Wollett*, 31 C. 58, 71 P. 1107.

Where work ceased Nov. 6th and was not resumed until Dec. 27, a materialman's statement filed on Dec. 10 was in time.—*Perkins v. Boyd*, 37 C. 267, 86 P. 1045.

Sufficiency of a verification to a statement under this section.—*Gutshall v. Kornaley*, 38 C. 199, 88 P. 159.

Putting in a mantle and fire-place after acceptance of the building was not a trivial imperfection or omission from the

CITATIONS CONTINUED.

work; nor does the fact that the building was occupied constitute a completion.—*Lichty v. Houston Lumber Co.*, 39 C. 55, 88 P. 846.

The burden is on plaintiff to prove that he filed the statement within the prescribed period.—*Foley v. Coon*, 41 C. 434, 93 P. 14.

A sub-contractor may file a statement after the last materials are furnished and at any time before the expiration of two months after completion.—*Rice v. Rhone* (Nov. 1910), 111 P. 588.

A statement filed by an assignee on numerous claims which did not show the balance due to each separate claim was defective.—*Hanna v. Savings Bank*, 3 A. 34, 31 P. 1022.

Where property extends into several counties a notice must be filed in each county.—*Arkansas River etc. Co. v. Flinn*, 3 A. 383, 33 P. 1006.

The filing of an unverified statement was void and of no effect.—*Rice v. Carmichael*, 4 A. 86, 34 P. 1010.

A statement which failed to mention the state, county or city in which the property was situated was defective.—*Sayre-Newton L. Co. v. Park*, 4 A. 483, 36 P. 446.

The act of 1889 considered as to the effect of its saving clause protecting contractors and material men when they failed to file statements.—*Mouat Lumber Co. v. Gilpin*, 4 A. 535, 36 P. 893.

Under the act of 1889 the failure to file the statement within the time prescribed did not defeat the lien except as against innocent purchasers.—*Marean v. Stanley*, 5 A. 339, 38 P. 396. (Affirmed 21 C. 43, 39 P. 1086.)

Unless the statement sets forth the name or names of the owners there is no lien.—*Sayre-Newton L. Co. v. Union Bank*, 6 A. 550, 41 P. 844.

The fact that a notice under the act of 1893 was addressed to the agent as owner did not vitiate the notice.—*Colo. Iron Works v. Taylor*, 12 A. 457, 55 P. 945.

A statement is not required to set the time of the completion of the work and a recital of the time is not binding.—*Burleigh Bldg. Co. v. Merchant B. & B. Co.*, 13 A. 456, 59 P. 83.

Where three houses were built upon and occupied part of four lots the material man was not required to sub-divide his claim but could file upon all as one claim.—*Sprague Inv. Co. v. Mouat Lumber Co.*, 14 A. 107, 60 P. 179.

Where after a building was turned over the owner insisted

CITATIONS CONTINUED.

upon certain changes the time for filing dated from the time the changes were completed.—*Stidger v. McPhee*, 15 A. 252, 62 P. 332.

A statement filed by a sub-contractor before the completion of the building was premature and of no effect.—*Tabor-Pierce L. Co. v. Int. Trust Co.*, 19 A. 117, 75 P. 153.

The requirement of the act of 1893 to incorporate the terms of the contract into the statement had reference only to the principal contractor.—*Chicago Lumber Co. v. Newcomb*, 19 A. 266, 74 P. 787.

4034. Action to enforce lien shall commence within six months.

SEC. 22. No lien claimed by virtue of this act shall hold the property longer than six months after the completion of the building, structure or other improvement, or the completion of the alteration, addition to, or repair thereof, as prescribed in section 9 of this act, unless an action be commenced within that time to enforce the same; *Provided*, That where two or more liens are claimed of record against the same premises or property, the commencement of any action within that time by any one or more of such lien claimants in which action or actions all the lien claimants, as appear by the records, are made parties, either plaintiff or defendant, shall be sufficient.

[Section 9 above referred to is section 4033.]

Legislation. Sec. 4034. Act 1899 p. 271 § 10, cited under 4025.

The section down to the proviso is substantially copied from § 6 p. 320, Act 1893, changing 4 months to 6 months. The proviso is new. The limitation was 6 months in all the prior Acts 1861 p. 263 § 29; 1867 p. 80 § 24; 1872 p. 152 § 8; G. L. § 1659; 1883 p. 232 § 21; G. S. § 2151, except that Act 1864 p. 104 § 7 allowed "one year after the last payment for labor or materials should become due."

CITATIONS.

The time begins to run from the date of filing the statement.—*Hart etc. Corporation v. Mullen*, 4 C. 512.

Manner of giving notice and commencing proceedings and serving summons under the act of 1872 stated.—*Decker v. Myles*, 4 C. 566.

This section cited in holding that the filing of a lis pendens is not necessary to give notice.—*Empire L. & C. Co. v. Engley*. 18 C. 391, 33 P. 154.

CITATIONS CONTINUED.

The suit must embrace all persons against whom priority of lien is claimed.—*Johnston v. Bennett*, 6 A. 367, 40 P. 849.

A lien claimant is not required to bring suit against third persons who may claim liens, within the time prescribed as a condition to the maintenance of lien rights against the owner.—*San Juan Hardware Co. v. Carrothers*, 7 A. 418, 43 P. 1055.

Where the indebtedness had accrued before the law of 1893 went into effect the right to a lien had attached and would be governed by the law then in force as to commencement of suit.—*Bitter v. Mouat L. & I. Co.*, 10 A. 308, 51 P. 519.

4035. Joinder of parties—Consolidation of actions.

SEC. 23. Any number of persons claiming liens against the same property and not contesting the claims of each other, may join as plaintiffs in the same action; and when separate actions are commenced, the court or the judge thereof may consolidate them upon motion of any party or parties in interest, or upon its own motion.

Upon such procedure for consolidation, one case shall be selected with which the other cases shall be incorporated; and all the parties to such other cases shall be made parties plaintiff or defendant as the court or judge may designate in said case so selected. All persons having claims for liens, the statements of which shall have been filed as aforesaid, shall be made parties to the action.

Those claiming liens who fail or refuse to become parties plaintiff, or for any reason shall not have been made such parties, shall be made parties defendant. Any party claiming a lien, not made a party to such action, may, at any time within the period provided in section 9 of this act, be allowed to intervene by motion, upon cause shown, and may be made a party defendant on the order of the court or the judge thereof, and shall fix, by such order, the time for such intervenor to plead or otherwise proceed. The pleadings and other proceedings of such intervenor thus made a party shall be the same as though he had been an original party. Any defendant who claims a lien shall, in answering, set forth by cross complaint his claim and lien. Likewise such defendant may set forth in said answer defensive matter to any claim or lien of

any plaintiff or co-defendant, or otherwise deny such claim or lien. The owner or owners of the property to which such lien shall have attached, and all other parties claiming of record any right, title, interest or equity therein, whose title or interests are to be charged with or affected by such lien, shall be made parties to the action.

[Section 9 above referred to is section 4033.]

Legislation. Sec. 4035. Act 1899 p. 272 § 11.

This section is drafted from Act 1893 p. 322 § 9, omitting that part which provides for "an amended summons" where new parties are brought in. All the earlier Acts provided similar proceedings. (Act 1883 p. 232 § 22; G. S. § 2152, Act 1872 p. 152 § 9; G. L. § 1660, 1867 p. 76 § 5.)

Act 1864 p. 102 and 1861 p. 258 reach the same end by calling for proceedings according to chancery practice.

CITATIONS.

Under the mechanics' lien act all creditors interested in the premises can have their claims adjusted in one suit.—*Ford G. M. Co. v. Langford*, 1 C. 63. *Keystone M. Co. v. Gallagher*, 5 C. 25.

In an action by material man or sub-contractor under the act of 1889 the contractor was held to be an indispensable party.—A personal judgment against him on published service was invalid.—*Davis v. Mouat Lumber Co.*, 2 A. 381, 31 P. 187.

This section cited in holding insufficient a complaint based upon numerous assignments.—*Hanna v. Savings Bank*, 3 A. 34, 31 P. 1022.

This section designates what persons shall be made parties.—*San Juan Hdw. Co. v. Carrothers*, 7 A. 418, 43 P. 1055.

The holder of a promissory note secured by trust deed is not the "owner" and is not an indispensable party.—*Cornell v. Conine-Eaton L. Co.*, 9 A. 229, 47 P. 913.

4036. Allegations of complaint—Amendment of pleadings.

SEC. 24. It shall be sufficient to allege in the complaint, in relation to any party claiming a lien, when it is desired to make a defendant, that such party claims a lien under this act upon the property described; and in case of the intervention of parties, or of the making of new parties, or of the consolidation of actions, so that the issues are in any manner changed or increased, any party to the action shall be allowed to amend his pleadings, or file new pleadings, as the nature of the case may require.

Legislation. Sec. 4036. Act 1899 p. 273 § 12, cited under 4025.

It is a combination of §§ 10, 11, Act 1893 p. 322, which were a re-enactment of §§ 23, 24, Act 1883 p. 233. G. S. §§ 2153, 2154.

CITATIONS.

This section cited in holding that the owner of a note secured by trust deed is not an indispensable party under sec. 4035.—*Cornell v. Conine-Eaton L. Co.*, 9 A. 229, 47 P. 913.

4037. Advancement of cause—Referee—Judgment pro rated—Decree—Publication of summons.

SEC. 25. The court, whenever the issues in such case are made up, shall advance such cause to the head of the docket for trial and may proceed to hear and determine said liens and claims, or may refer the same to a referee to ascertain and report upon said liens and claims and the amounts justly due thereon.

Judgments shall be rendered according to the rights of the parties. The various rights of all the lien claimants and other parties to any such action, shall be determined and incorporated in one judgment or decree. Each party who shall establish his claim under this act shall have judgment against the party personally liable to him for the full amount of his claim so established, and shall have a lien established and determined in said decree upon the property to which his lien shall have attached to the extent hereinbefore stated;

Provided, always, That proceedings to foreclose and enforce mechanics' liens under this act shall be deemed actions in rem, and that service by publication may be obtained against any defendant therein in manner as by law provided, and that personal judgment against the principal contractor or other person personally liable for the debt for which the lien is claimed shall not be requisite to a decree of foreclosure in favor of a sub-contractor or material-man.

[For publication of summons see Code, section 45, p. 82.]

Legislation. Sec. 4037. Act 1899 p. 273 § 13, cited under 4025.

The section is taken from Act 1893 p. 323 § 12, similar to Act 1883 p. 233 § 25, except the proviso, which is new in the 1899 Act.

CITATIONS.

Where one of several claimants claimed a lien upon a portion only of the property, an order directing pro rata distribution from a sale of the entire property was void.—*Bassick M. Co. v. Schoolfield*, 10 C. 52, 14 P. 68 .

Under this section of the act of 1883 a personal judgment might be rendered, though the right to a lien failed.—*Cannon v. Williams*, 14 C. 25, 23 P. 457. *St. Kevin M. Co. v. Isaacs*, 18 C. 401, 32 P. 823.

The court may call a jury to determine the amount due; defendant not objecting was not in position to complain that the court should have referred the matter to a referee.—*Bradbury & Co., v. Butler & Son*, 1 A. 432, 29 P. 463.

4038. Sale—Disposition of proceeds—Execution—Transcript of judgment.

SEC. 26. The court shall cause said property to be sold in satisfaction of said liens and costs of suit, as in case of foreclosure of mortgages; and any party in whose favor a judgment for a lien may have been rendered, may cause the property to be sold within the time and in the manner provided for sales of real estate on executions issued out of any court of record, and there shall be the same rights of redemption as are provided for in the case of sales of real estate on executions. And if the proceeds of such sale after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the proceeds of sale amount to more than the sum of said liens and all costs, then the remainder shall be paid over to the owner of said property; and each party whose claim is not fully satisfied in the manner hereinbefore provided, shall have execution for the balance unsatisfied against the party personally liable, as in other cases. In the first instance without a previous sale of said property to which such liens shall have attached, an execution may issue in behalf of any such lien claimant for the full amount of his claim against the party personally liable, and he may thereafter enforce such lien for any balance of such judgment remaining unsatisfied. A transcript of the docket of said judgment and decree may be filed with the recorder of the

county where such property is situated, or in any other county, and thereupon said judgment and decree shall become a lien upon the real property in such county of each party so personally liable in favor of any such lien claimant holding any such judgment against any such party so personally liable, as in other cases of recording transcripts of judgment.

[For lien created by filing transcript of judgment see Code, section 251, p. 121, and sections 3609-3612.]

[For redemption of mortgage see section 3657.]

[For foreclosure of mortgage see Code, sections 271-273.]

Legislation. Sec. 4038. Act 1899 p. 274 § 14, a substantial reprint of Act 1893 p. 323 § 13 and of Act 1883 p. 234 § 26, G. S. § 2156.

CITATIONS.

The time to be fixed for sale construed to mean twenty days—*San Juan etc. M. Co. v. Finch*, 6 C. 224.

An order to sell all the property to satisfy all the claimants, when one claimed only a portion, was void.—*Bassick M. Co. v. Schoolfield*, 10 C. 52, 14 P. 68.

4039. Parties to action—Service of summons.

SEC. 27. Principal contractors and all other persons personally liable for the debt for which the lien is claimed shall be made parties to actions to enforce liens under this act, and service of summons shall be made either personally or by publication in the same manner and with like effect as is now provided by law in cases of attachment and other proceedings in rem.

Legislation. Sec. 4039. Act 1889 p. 274 § 15. Act 1893 p. 324 § 16, covers the same ground in other language, but the section does not collate with any of the sections of the previous Acts.

CITATIONS.

The contractor should be made a party.—*U. P. Ry. Co. v. Davidson*, 21 C. 93, 39 P. 1095. *Davis v. Mount L. Co.*, 2 A. 381, 31 P. 187.

4040. Costs—Attorney's fee.

SEC. 28. The court shall divide the costs between the parties liable therefor, according to the justice of the case; and, in all suits for the foreclosure of liens provided for in this act in which a lien claimant shall obtain a judgment and decree of fore-

closure against the property described in his lien there shall be taxed as costs in addition to the costs already provided for in such cases, a reasonable sum as an attorney fee to be fixed and apporportioned by the court at the time of rendering such judgment and decree.

Legislation. Sec. 4040. Act 1899 p. 275 § 16, cited under 4025.

Act 1893 p. 235 § 18 was the first that purported to give an attorney's fee. Costs were provided for by Act 1883 p. 224 § 27; G. S. § 2157, 1872 p. 152 § 9; R. S. p. 434 § 27; 1867 p. 80 § 27; 1864 p. 107 § 28; 1861 p. 263 § 32.

Act 1893 p. 324 § 14 contained the same provision as the text as to dividing the costs.

CITATIONS.

That part of the act of 1891 allowing attorney's fees was unconstitutional.—*Davidson v. Jennings*, 27 C. 191, 60 P. 355. Also the act of 1893. *Campbell v. Los Angeles G. M. Co.*, 28 C. 257, 64 P. 194. *Stickman v. Wollett*, 31 C. 61, 71 P. 1107. *Los Angeles G. M. Co. v. Campbell*, 13 A. 2, 56 P. 246. *Burleigh Bldg. Co. v. Merchant B. & B. Co.*, 13 A. 466, 59 P. 84. *Perkins v. Boyd*, 16 A. 270, 65 P. 350.

4041. Assignment of lien—Failure to support lien.

SEC. 29. Any party claiming a lien, may assign, in writing, his claim and lien to any other claimant or other person who shall thereupon have all the rights and remedies of the assignor, for the purpose of filing and for the enforcement of any such lien by action under this act, and the assignment shall be a sufficient consideration as to all other parties for the purpose of such action. Such assignment may be made before or after the filing of the statement of lien. Any such claimant, whether as assignee or otherwise, may include all the liens he may possess against the same property in any such statement, and when more than one such claim shall be included in one such statement, one verification thereto shall be sufficient. Any person may file separate statements of two or more claims.* If, on the trial of a cause under the provisions of this act, the proceedings will not support a lien, the plaintiff or plaintiffs and all lien claimants entitled thereto may proceed to judgment as in an action on contract, and executions may issue as in such cases provided, and said judgment or judgments shall have all the rights of a judgment in a personal action.

Legislation. Sec. 4041. Act 1899 p. 275 § 17, cited under 4025.

Substantially same as Act 1893 p. 324 § 15 and Act 1883 p. 235 § 28, G. S. § 2158, down to the star.

Assignment of claim was allowed by Act 1872 p. 154 § 12. G. L. § 1662. Act of 1883 p. 235 § 28. G. S. § 2158.

CITATIONS.

Personal judgment may be rendered though the right to a lien be not sustained.—*Cannon v. Williams*, 14 C. 26, 23 P. 458. *St. Kevin M. Co. v. Isaacs*, 18 C. 401, 32 P. 822.

Assignment may be made before or after filing statement.—*Rialto M. & M. Co. v. Lowell*, 23 C. 254, 47 P. 264. *Sprague Inv. Co. v. Mouat L. Co.*, 14 A. 116, 60 P. 182. *Perkins v. Boyd*, 16 A. 269, 65 P. 350.

The act permits judgment in personam only when the plaintiff proves a contract on which he may recover regardless of the act.—*Lowrey v. Svard*, 8 A. 358, 46 P. 619.

4042. Satisfaction of lien—Failure to release.

Sec. 30. The claimant of any such lien or liens the statement or statements of which have been filed as aforesaid, on the payment of the amount thereof, together with the costs of filing and recording such lien or liens, and the acknowledgment of satisfaction (and accrued costs of suit in case suit has been brought thereon) shall, at the request of any person interested in the property charged therewith, enter or cause to be entered an acknowledgment of satisfaction of the same of record, and if he shall neglect or refuse to do so within ten days after the written request of any person so interested, he shall forfeit and pay to such person the sum of ten dollars per day for every day of such neglect or refusal, to be recovered in the same manner as other debts. A valid tender of payment, refused by any such claimant, shall be equivalent to a payment for the purpose of this section. Any such statement may be satisfied of record in the same manner as mortgages.

[Satisfaction of mortgages. Section 6888.]

Legislation. Sec. 4042. Act 1899 p. 275 § 18, cited under § 4025.

A reprint of Act 1893 p. 325 § 17, but the words in parenthesis are new and the word "written" did not precede "request" in the 1893 section. Said § 17 was taken from the first half of § 30, Act 1883 p. 235, except that the 1883 section read "reasonable time," while the later sections read "ten days." The 1883 section was a substitute for G. L. § 1662, same as Act 1872 p. 154 § 11. Act 1864 p. 107 § 30 required the creditor to acknowledge satisfaction by marginal entry.

CITATIONS.

This section cited in holding that it is not necessary to file lis pendens.—*Empire L. & C. Co. v. Engley*, 18 C. 392, 33 P. 154.

4043. Effect of agreement to waive.

SEC. 31. No agreement to waive, abandon or refrain from enforcing any lien provided for by this act shall be binding except as between the parties to such contract; and the provisions of this act shall receive a liberal construction in all cases.

Legislation. Sec. 4043. Act 1899 p. 276 § 19, cited under 4025.
This section is new.

CITATIONS.

The liberal construction provision of this section applied in holding sufficient a verification to a statement.—*Gutshall v. Kornaley*, 38 C. 199, 88 P. 159.

4044. Code of procedure applies.

SEC. 32. The provisions of the code of civil procedure of the state of Colorado, in so far as the same are applicable and not in conflict with the provisions of this act, shall be observed in proceedings to establish and enforce mechanics' liens.

[L. '99, p. 275, section 21, following above twenty sections, was a repeal and saving clause. The repealing clause repealed the mechanics' lien law of 1893, which superseded the mechanics' lien law of 1883, save as to the following four sections.]

Legislation. Sec. 4044. Act 1899 p. 276 § 20. To the same effect is § 31, Act 1883 p. 236.

4045. Liens of surveyors and engineers.

SEC. 33. The provisions of this act shall apply to surveyors, civil and mining engineers doing any work of surveying or platting of any mines, mining claims, lodes or mineral deposits, and they shall have like lien and claim as other persons under the provisions of this act.

[See note, section 4048.]

Legislation. Sec. 4045. G. S. § 2138, Act 1883 p. 227 § 8, entitled:

AN ACT

To Secure Liens to Mechanics and Others, and to Repeal All Other Acts in Relation Thereto.

If this section was repealed by the Act of 1899 (4025-4044) a surveyor would nevertheless have a lien under the terms of section 4025.

4046. Lien will attach if under two contracts.

SEC. 34. In case the act of doing such work or of furnishing such materials, shall be continuous, said lien shall attach as in other cases, even though such work shall have been done, or materials shall have been furnished, under two or more contracts between the same parties.

[See also section 4027.]
[See note, section 4048.]

Legislation. Sec. 4046. Act 1883 p. 230 § 17, cited under § 4045. G. S. § 2147.

CITATIONS.

It was not necessary for the lien claimant to assert his lien at the completion of each of several contracts. Interruptions of short periods in the construction did not destroy the continuity of the work.—*Cary Hardware Co. v. McCarty*, 10 A. 215, 50 P. 750.

4047. Payment to avoid invalid—Filing to defraud—Forfeit.

SEC. 35. No payment made by any such owner to any such contractor for the purpose of avoiding any anticipated lien of any sub-contractor shall be valid; and if any person shall file either of said statements for a lien for a larger sum than is due, or to become due, in fact, or in probability, as the case may be, with intent to cheat or defraud any other person, and that fact shall appear in any proceeding under this act, such person shall forfeit all rights to such lien under this act.

[See note, section 4048.]

Legislation. Sec. 4047. G. S. § 2159. Act 1883 p. 235 § 29, cited under § 4045.

By G. L. § 1667, Act 1876 p. 259 § 6, payments to avoid anticipated liens of sub-parties are declared invalid. This 1876 Act amended Act 1872 p. 150 § 6. Act 1861 p. 259 § 6. But the clause in the text as to filing excessive claims seems to be new.

4048. Other remedies not barred.

SEC. 36. No remedy given in this act shall be construed as preventing any person from enforcing any other remedy which he otherwise would have had, except as otherwise herein provided. The practice under this act shall be in accordance with the code of civil procedure of the state of Colorado. In case of two or more owners, contractors or sub-contractors interested in the same contract, the rule of procedure shall be the same as in the case of one such.

[Sections 4045-4048 are found in the '83 act on mechanics' liens and do not seem to be in conflict with any of the subsequent acts on that subject; to-wit, L. '93, p. 315, or the latest act found in this compilation as sections 4025-4044.]

Legislation. Sec. 4048. Act 1883 p. 236 § 31, cited under § 4045.

G. L. § 1661 was to the same effect, being Act 1872 p. 153 § 10.

The first sentence of the text was covered by Act 1861 p. 263 § 30, Act 1864 p. 107 § 29, Act 1867 p. 80 § 25, R. S. p. 434 § 25.

CITATIONS.

This section cited in holding that personal judgment could be rendered under the act of 1883 although the lien failed.—*Cannon v. Williams*, 14 C. 25, 23 P. 457.

The recovery of judgment for a debt for labor and materials does not bar an action to foreclose the lien to secure the payment of the same indebtedness.—*Marean v. Stanley*, 5 A. 337, 38 P. 396.

The owner of a judgment can not maintain an action to marshal liens or a bill quia timet.—*San Juan Hardware Co. v. Carrothers*, 7 A. 419, 43 P. 1056.

The difference between the statutes of Illinois and this state as to bringing in parties stated.—*Cornell v. Conine-Eaton L. Co.*, 9 A. 232, 47 P. 913.

LIENS ON WELLS AND DITCHES.**4049. Lien on wells—Extent of lien.**

SEC. 37. That any person or persons, company or corporation, who perform labor or furnish material or supplies for constructing, altering or repairing, or for the digging, drilling or boring, operating, completing or repairing of any gas well, oil well or any other well, by virtue of a contract with the owner or his authorized agent, shall have a lien to secure the payment of the

same upon such gas well, oil well, or such other well, and upon the materials and machinery and equipment and supplies so furnished, and in case the contract is with the owner of the lot or land, then such lien shall also be upon the interest of the owner of the lot or land upon which the same may stand, and in case the contract is with the lease holder of the lot or land then such lien shall also be upon the interest of the lease holder on the lot or land upon which the same may stand or in relation to which such material or supplies are furnished.

Legislation. Sec. 4049. Act 1903 p. 355 § 1, entitled:

AN ACT

To Secure to Person or Persons Who Perform Labor or Furnish Material, Machinery or Supplies, for Constructing, Altering, Repairing, Digging, Boring, Operating or Completing Gas, Oil or Other Wells.

4050. Procedure to perfect and enforce.

SEC. 38. That in perfecting and enforcing the right herein given, the procedure indicated in the laws of this state, and the remedies and rights given, in the statutes of and concerning "Liens of Mechanics," as the same may now, or in the hereafter shall exist, shall be held to apply, in so far as the same may be applicable.

[The act concerning liens of mechanics is found in sections 4025-4044.]

Legislation. Sec. 4050. Act 1903 § 2, cited under § 4049.

4051. Liability of co-owners of unincorporated ditch.

SEC. 39. All co-owners of unincorporated irrigating ditches shall pay for the necessary cleaning and repairing of such ditches in the proportion that their respective interests bear to the total expenses incurred in said cleaning and repairing; *Provided*, That any such co-owner may perform labor in cleaning and repairing such ditch, equivalent in value to his or their share of such expenses as aforesaid; *Provided*, No co-owner shall be held liable for cleaning or repairing any ditch below the point from which he takes his portion of the water.

[Lien for deferred payments for water rights on desert lands. Section 5156.]

Legislation. Sec. 4051. Act 1893 p. 312 § 1, entitled:

AN ACT

To Secure Liens Upon Interests In Unincorporated Irrigating Ditches of Co-Owners Who Fail and Refuse to Assist in Cleaning and Repairing Such Ditches.

CITATIONS.

In an action to enforce a lien under this section held that where ditch owners had formed an association, they were controlled by the by-laws in the matter of withdrawing from the association.—*Strang v. Osborne*, 42 C. 189, 194, 94 P. 321.

4052. Request to clean ditch—Liability of co-owners.

SEC. 40. Upon the failure of any one or more of several co-owners upon written request of the owners of one-third (1-3) of the carrying capacity or board of directors to assist in cleaning and repairing such ditch, the other co-owner or co-owners shall proceed to clean and repair the same, and shall keep an accurate account of the cost and expenses incurred; and shall upon the completion of such work deliver to each of such delinquent co-owners, his agent, lessee or legal representative an itemized statement of such cost and expenses.

Legislation. Sec. 4052. Act 1893 § 2, cited under § 4051.

4053. Lien of co-owners against delinquent.

SEC. 41. The co-owner or co-owners of any such ditch who shall clean and repair the same, as specified in section two (2) of this act, shall have a lien upon the interest in such ditch owned by such delinquent co-owner for his proportion of such cost and expenses.

[Section 2 above referred to is section 4052.]

Legislation. Sec. 4053. Act 1893 § 3, cited under § 4051.

4054. Claimant file verified statement—Contents.

SEC. 42. Any person wishing to avail himself of the provisions of this act shall file for record in the office of the recorder of the county wherein the ditch to be affected by the lien is situated, within thirty (30) days after the completion of such work

a statement addressed to the owner or owners of the interest upon which such lien is claimed, specifying the name of the ditch and the extent of the interest in the same upon which such lien is claimed; the date upon which the work commenced and the date it was completed; the total amount expended on such ditch, and the amount due from such delinquent co-owners. Said statement shall be signed and verified upon oath by a claimant.

Legislation. Sec. 4054. Act 1893 § 4, cited under § 4051.

4055. Lien may be assigned.

SEC. 43. Any party claiming a lien under the provisions of this act may assign in writing his claim and lien to any person, who shall thereafter have all the rights and remedies of the assignor.

Legislation. Sec. 4055. Act 1893 § 5, cited under § 4051.

CITATIONS.

The assignment of a debt entitled to a mechanic's lien carries with it the lien and invests in the assignee the right to enforce it.—*Perkins v. Boyd*, 16 A. 269, 65 P. 350.

4056. Action to enforce begun in six months.

SEC. 44. No lien claim by virtue of this act shall hold the property longer than six (6) months after filing the statement described in section four (4), unless an action to be commenced within that time to enforce the same.

[Section 4 above referred to is section 4054.]

Legislation. Sec. 4056. Act 1893 § 6, cited under § 4051.

4057. Procedure—Judgment—Execution.

SEC. 45. Actions to enforce liens claimed by virtue of this act shall be commenced and prosecuted in accordance with the procedure in other civil actions in the state of Colorado. Each party who shall establish his claim under this act shall have a judgment against the party personally liable to him, for the full amount of his claim so established, and shall have a lien decreed and determined, upon the ditch interest to which his lien shall

have attached to the extent of his said claims; *Provided, however,* That no judgment shall exceed the interest of the party in such ditch, nor shall execution issue against other than his said interest in said ditch.

Legislation. Sec. 4057. Act 1893 § 7, cited under § 4051.

4058. Sale—Right of redemption.

SEC. 46. The court shall cause such ditch interest to be sold in satisfaction of said lien and costs, as in case of foreslosure of mortgages, and in manner and form provided for sales on executions issued out of courts of record, and the owner and creditors shall have a right to redeem, as is provided for in cases of sales of real estate on execution.

Legislation. Sec. 4058. Act 1893 § 8, cited under § 4051.

4059. Attorney's fee—Costs.

SEC. 47. In all actions brought to enforce liens claimed under the provisions of this act in which the plaintiff is successful, a reasonable attorney's fee, to be fixed by the court, shall be assessed against the defendant, and shall be taxed as costs in the case. And the plaintiff if successful shall also recover all other costs and expenses incurred in claiming and enforcing his lien.

Legislation. Sec. 4059. Act 1893 § 9, cited under § 4051.

4060. Satisfaction of lien—Refusal.

SEC. 48. The claimant of any such lien the statement of which has been recorded as aforesaid, on the payment of the amount claimed together with costs of making and recording such statement and costs of satisfaction, shall, at the request of any person interested in the ditch interest charged therewith, enter or cause to be entered of record, satisfaction of the same, and if he shall neglect or refuse to do so within ten (10) days after such request, he shall forfeit and pay to the person making such request the sum of ten (10) dollars for every day of such neglect or refusal, to be recovered in the same manner as other debts, any such statement may be cancelled on the margin of the record by

an acknowledgment of satisfaction over the signature of the claimant, or an agent authorized thereto in writing.

[Penalty for removing property covered by lien. Sections 6891 and 6892.]

[Lien for taxes. Sections 5530, 5594 and 5677.]

[Lien for inheritance tax. Section 5571.]

[Accounts found due the state are a lien on real estate. Section 6214.]

[Lien for costs of local improvements. Sections 5304, 5335 and 5381.]

Legislation. Sec. 4060. Act 1893 § 10, cited under § 4051.

III. LIEN OF MINERS, MILL MEN AND OTHERS.

Section.

4060-A. Lien for labor and supplies to mine or mill.

4060-B. Retention of pay to protect lien claimant.

4060-C. Claim admitted unless disputed within ten days after notice.

4060-D. Suit by creditor of contractor against owner.

4060-E. Record of lien statement—Lien for one year.

4060-F. Procedure to enforce lien.

4060-G. Satisfaction piece.

4060-H. Oil wells, iron and lead mines.

4060-A. Lien for labor and supplies to mine or mill.

SEC. 48a. That every miner or other person, who at the request of the owner or owners or his, its or their agents of any lode, lead, ledge, mine, deposit bearing, exploring or developing silver, gold, cinnabar, copper, or other ores or minerals, or any coal bank or coal mine, or at the request of any contractor or sub-contractor shall perform any labor whatever on said mine, lode, lead, ledge, deposit or bank, or upon any mill or other property which is appurtenant or appertains to said mines, or furnishes any timber, powder, rope, nails, candles, fuse, caps, rails, spikes, steel or iron or any other material whatever used in the sinking of any shaft upon any such property or for running drifts, tunnels, levels, or making stopes thereon or making other openings thereon of any kind whatever, or for timbering any of such workings, or who shall furnish any of said materials or any machinery of any kind or character for hoist or windlass thereon or for any purpose of mining upon said property, or for any car track, cars

used thereon, or shall perform any labor in any of said workings upon said property, or shall furnish any material whatever for use in or about any mill which may be appurtenant or appertaining or used in connection with any mining claim, or perform any labor therein, shall have a first lien upon any or all of such property hereinbefore mentioned prior and superior to every other lien or incumbrance placed upon such property or any of it subsequent to the commencement of any such work or labor mentioned herein or to the commencement of the furnishing of any of the materials mentioned herein which may be created after the passage of this act upon such lode, lead, ledge, mine, deposit, bank, mill, tunnel or other working or improvement and upon any property appurtenant thereto or made in connection with the workings of any mine to secure the payment of said labor or said material.

Legislation. Sec. 4060-A. § 1 of Act of 1911 S. B. No. 316, entitled:

AN ACT

Providing a Lien for Miners, Mill Men and Those Furnishing Materials for Mines and Mills or Either of Them. (Approved June 4, 1911.)

This Act seems merely to give a separate formula for the protection of miners and mill men and furnishers of supplies to mines and mills with a different limitation of time, and in no way adds to the protection they had under section 4028 and the other provisions of the Mechanics Lien Acts.

4060-B. Retention of pay to protect lien claimant.

SEC. 48b. Every miner or other person doing or performing any work or furnishing any materials as specified in section 1. under a contract either express or implied between the owner or owners of any mine or his or their agent, and any contractor working on such mine, whether such work shall be performed or materials furnished as miner, laborer, or otherwise, whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner or owners of such mine or tunnel, or to his or their agent or superintendent, an attested account of the amount and value of the work and labor thus performed or of the materials thus furnished and remaining unpaid, and thereupon such owner or owners or his or their agent shall retain out of the first subsequent payments to such contractor the amount so due

for such work and labor or materials furnished, for the benefit of the person so performing or furnishing the same.

Legislation. Sec. 4060-B. Sec. 2 of Act of 1911, cited under § 4060-A.

4060-C. Claim admitted unless disputed within ten days after notice.

SEC. 48c. Whenever any account for labor performed or materials furnished as specified in the last preceding section shall be placed in the hands of the owner or owners of any mine or tunnel, or his or their agent, it shall be the duty of such owner or owners or agent to furnish such contractor with a copy of such papers so that if there be any disagreement between such contractor or his sub-contractor and the creditor of either, as the case may be, they may by amicable adjustment or by arbitration ascertain the sum due, if any; and if such contractor or sub-contractor shall not within ten days after the receipt of such papers give such owner or owners, or agent, written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or owners or agent may pay the same when it becomes due, and for that purpose may deduct the amount out of any moneys due by him to his sub-contractor, in case such amount or demand is against such sub-contractor for work and labor performed, or materials furnished as aforesaid.

Legislation. Sec. 4060-C. Sec. 3 of Act of 1911, cited under § 4060-A.

4060-D. Suit by creditor of contractor against owner.

SEC. 48d. The amount which may be due from any contractor to his creditor may be recovered from said owner or owners by the creditor of said contractor in any action at law to the extent and value of any balance due by the owner or owners to his or their contractor under the contract with him, at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same.

Legislation. Sec. 4060-D. Sec. 4 of Act of 1911, cited under § 4060-A.

4060-E. Record of lien statement—Lien for one year.

SEC. 48e. Any person entitled to a lien under this article shall make an account in writing of the items of labor, skill, machinery and materials furnished, as the case may be, and after making oath thereto, shall within sixty days from the time of completing such labor and skill or furnishing the last item of machinery or materials, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which labor, skill, machinery or materials shall have been furnished; and also file at the same time a correct description of the property to be charged with said lien, which account and description so made and filed shall be recorded in a separate book to be provided for the purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work or furnishing the last item of machinery or materials, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same, or a copy thereof, shall be filed with said account and description; *Provided*, That all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid pro rata out of proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale.

Legislation. Sec. 4060-E. Sec. 5 of Act of 1911, cited under § 4060-A.

This requirement of filing in the office of the clerk of the district court is entirely new and necessitates a search for secret liens in that office in addition to the search for judgment and other liens in the office of the county recorder. The Act seems to be a special miners lien Act and to exclude procedure under the Mechanics Lien Act.

4060-F. Procedure to enforce lien.

SEC. 48f. Any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced thereon such lien shall continue until said suit or suits be finally determined and satisfied; and in all actions instituted under this article, all persons claiming liens upon the property charged shall

be made parties to such action or proceeding, and the rights of all parties therein shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all such parties under the provisions of this article.

Legislation. Sec. 4060-F. Sec. 6 of Act of 1911, cited under § 4060-A.

4060-G. Satisfaction piece.

SEC. 48g. Any person who shall have filed his account and perfected his lien under the provisions of this article and shall have received satisfaction of his claim or demand and the legal costs of his proceedings thereunder, shall upon the request of any person interested, and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand with legal costs, shall not within six days after receiving such satisfaction or tender of payment enter satisfaction as aforesaid, he shall forfeit and pay to the person or persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect; *Provided*, He shall have been requested in such case to enter satisfaction as aforesaid.

Legislation. Sec. 4060-G. Sec. 7 of Act of 1911, cited under § 4060-A.

4060-H. Oil wells, iron and lead mines.

SEC. 48h. The provisions of this article shall apply to oil wells or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable.

Legislation. Sec. 4060-H. Sec. 8 of Act of 1911, cited under § 4060-A.
Sec. 9 was a general repeal.

CHAPTER LXXXV.

LIMITATIONS.

- I. PERSONAL ACTIONS.—4061-4083.
 - II. CONCERNING REAL ESTATE.—4084-4093.
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I. PERSONAL ACTIONS.

Section.

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- 4079. Parties in joint interest not bind each other by promise.
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- 4081. Abatement for non-joinder—Effect of bar.
- 4082. Payment—Endorsement by payee of note, no evidence.
- 4083. Payment by one not bind other joint debtors.

[Limitation of criminal actions. Section 1949.]

4061. What actions are barred in six years.

SECTION 1. The following actions shall be commenced within six years, next after the cause of action shall accrue, and not afterwards:

First—All actions of debt founded upon any contract or liability in action.

Second—All actions upon judgments rendered in any court not being a court of record.

Third—All actions for arrears of rent.

Fourth—All actions of assumpsit, or on the case founded on any contract or liability, express or implied.

Fifth—All actions for waste and for trespass upon land.

Sixth—All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels.

Seventh—All other actions on the case, except actions for slanderous words and for libels.

[Limitation of action against railroads for not ploughing fire guard. Section 5511.]

Legislation. Sec. 4061. Act 1861 p. 341 § 1. R. S. p. 438 § 1. G. L. § 1671. G. S. § 2163.

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The statute does not run against a creditor who is prevented by a superior law from bringing his action.—*Brooks v. Bates*, 7 C. 576, 4 P. 1069.

The practice in most of the states is to declare on the original indebtedness, and if the statute be interposed, to reply the new promise.—*Polk v. Butterfield*, 5 C. 327, 12 P. 216.

The court can not assume that a warrant of attorney to confess judgment on a note is void after six years.—*Cross v. Moffat*, 11 C. 212, 17 P. 771.

The amount due a firm cannot by assignment to one of its members be included in his individual account against the same debtor so as to avoid the bar of the statute.—*King v. Post*, 12 C. 356, 21 P. 38.

The six year statute applies to specialties in action as well as to simple contracts. In this respect it is unlike the statute of 21 James I and of many of the American states.—*Toothaker v. Boulder*, 13 C. 225, 22 P. 468.

The statute is applicable to any one or all of several dis-

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inct causes of action though embraced in a single count.—*Gilpin v. Adams*, 14 C. 512, 24 P. 567.

When a county judge resigns without paying over a deposit to his successor a cause of action immediately accrues on the official bond.—*Clelland v. McCumber*, 15 C. 356, 25 P. 701.

A new promise will not be implied from part payment where the circumstances of the payment rebut the inference of such promise.—*Jones v. Langhorne*, 19 C. 206, 34 P. 997.

The general rule in civil actions is that the statute must be pleaded or it is deemed waived, but this rule does not apply to penal actions.—*Atchison et c. R. Co. v. Tanner*, 19 C. 563, 36 P. 541. *Haley v. Elliott*, 20 C. 202, 37 P. 28.

The statute does not begin to run in favor of a bailee until he converts the property to his own use.—*Austin v. Van Loon*, 36 C. 199, 84 P. 978.

Interest coupons not severed from the note are not barred by the statute if the note is not barred.—*First Nat. Bank v. Park*, 37 C. 305, 86 P. 106.

An action to recover damages for breach of covenants in a deed does not come within any of the provisions of this section.—*Hayden v. Patterson*, 39 C. 17, 88 P. 438.

The statute is not a bar to an action for money loaned when brought within six years from the date of the last payment of interest.—*Purdy v. DePrez*, 39 C. 68, 88 P. 972.

Parol evidence has always been admissible to prove a new promise except during the time that the law of 1876 p. 96 was in force.—*Sartor v. Wells*, 39 C. 90, 89 P. 799.

The statute does not run against a continuing nuisance.—*Wright v. Ulrich*, 40 C. 440, 91 P. 915.

Foreclosure of a trust deed is not "an action" such as is barred by this section.—*Brereton v. Benedict*, 41 C. 18, 92 P. 238. *Holmquist v. Gilbert*, 41 C. 117, 92 P. 233. *Foot v. Burr*, 41 C. 195, 92 P. 237. *McClung v. Graham*, 45 C. 268, 100 P. 411.

The endorsement on a note of the proceeds of a trust deed foreclosure held not an implied promise of the maker to pay the balance.—*Holmquist v. Gilbert*, 41 C. 121, 92 P. 233.

Statement of sufficiency of a new promise to remove the bar of the statute.—*Reed v. Interstate Oil Co.*, 41 C. 463, 92 P. 911.

Where warrants issued by a town are repudiated an action is barred six years after the first repudiation.—*Howe v. Gunnison*, 42 C. 540, 95 P. 283.

Where a trust deed provided that upon default of interest the principal might become due and the creditor so elects the

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statute runs from the time of default.—*Lovell v. Goss*, 45 C. 307, 101 P. 73.

An action to recover damages for seepage from a canal accrues when the lands are first visibly affected and injured.—*Middelkamp v. Bessemer Irr. Co.*, 46 C. 113, 103 P. 282. (*Cons. etc. Co. v. Hamlin*, 6 A. 341, 40 P. 582, Distinguished.)

This section does not limit the time within which an execution otherwise issuable as of right may issue on a justice's judgment. If the bar of the statute appears on the face of the complaint it may be pleaded by special demurrer.—*Brown v. Bell*, 46 C. 166-168, 103 P. 380.

The defense of laches is to be asserted by answer not by demurrer.—*Allen v. Blanche G. M. Co.*, 46 C. 202, 102 P. 1072.

The statute begins to run against county orders from the date of demand for payment.—*Schloss v. Pitkin County*, 1 A. 147, 28 P. 19.

The limitation of actions against bank directors for failure to file semi-annual statements is not controlled by this section but by sec. 4068.—*Larsen v. James*, 1 A. 316, 29 P. 184.

The endorsement of a note without the assent of the maker of a part payment does not stop the running of the statute. Payment by an agent from the proceeds of a sale of collateral removes the bar.—*Boulder Nat. Bank v. Rowland*, 1 A. 469, 29 P. 465.

To raise an implied promise by part payment the payment must be voluntary and by the debtor to the creditor.—*Sears v. Hicklin*, 3 A. 331, 33 P. 137.

The statute is a personal defense of which a defendant may or may not avail himself at his pleasure.—*Williams v. Carr*, 4 A. 368, 36 P. 646. *Owers v. Olathe S. M. Co.*, 6 A. 9, 39 P. 980.

The statute being a strict defense, if a party omit to plead it the court will not allow him to amend by adding that plea.—*Owers v. Olathe S. M. Co.*, 6 A. 9, 39 P. 980.

To render the statute available it must be set up in the pleading. Instance of insufficient pleading of the statute.—*Adams v. Tucker*, 6 A. 396, 40 P. 783.

An action for the recovery of money wrongfully converted may be commenced at any time within six years.—*Colo. F. & I. Co. v. Chappell*, 12 A. 385, 55 P. 606.

Where a contract provided that if the vendor failed to procure a patent to the land the purchaser should receive back all money paid, limitation would run back from the time a patent was issued to another party and not from the time the money was paid.—*Platte Land Co. v. Hubbard*, 12 A. 466, 56 P. 64.

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In an action by one partner against the other for a balance due upon an account on dissolution the statute would begin to run from the time of making the statement of account.—*Lendholm v. Bailey*, 16 A. 190, 64 P. 586.

Where an action on a note secured by mortgage or deed of trust is barred, an action to foreclose the mortgage or deed of trust is also barred.—*McGovney v. Gwillim*, 16 A. 284, 65 P. 346.

4062. Actions barred in one year—Assaults, slander, false imprisonment.

SEC. 2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within one year, next after the cause of action shall accrue, and not afterwards.

Legislation. Sec. 4062. Act 1861 p. 341 § 2. R. S. p. 438 § 2. G. L. § 1672. G. S. § 2164.

CITATIONS.

This section applied in an action where the words used in a notice were not actionable in themselves.—*Bush v. McMann*, 12 A. 508, 55 P. 957.

Where the complaint showed on its face that the alleged publication was published more than one year prior to the action a demurrer was properly sustained.—*Evans v. Republican Pub. Co.*, 20 A. 282, 78 P. 311.

4063. Actions barred in six months—Against officers for escape.

SEC. 3. All actions against sheriffs or other officers for the escape of persons imprisoned on civil process, shall be commenced within six months from the time of such escape, and not afterwards.

Legislation. Sec. 4063. Act 1861 p. 341 § 3. R. S. p. 438 § 3. G. L. § 1673. G. S. § 2165.

4064. Actions barred in one year—Sheriff's and coroner's liabilities.

SEC. 4. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing of any act in their official

capacity, or by the omission of any official duty, except for escapes, shall be brought within one year after the cause of action shall have accrued, and not after that period.

[Limitation of action to recover fines. Section 6667.]

[Limitation for presenting claim against estates. Sections 7210 and 7211.]

Legislation. Sec. 4064. Act 1861 p. 341 § 4. R. S. p. 438 § 4. G. L. § 1674. G. S. § 2166.

CITATIONS.

No cause of action exists against a sheriff until his negligence or misconduct has prevented or retarded the vindication of the rights of litigants.—*Peo. v. Cramer*, 15 C. 158, 25 P. 302.

4065. Actions on accounts—Last item proved.

SEC. 5. In all actions of debt or assumpsit, brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

[Limitation of period for prosecutions, see section 1949.]

Legislation. Sec. 4065. Act 1861 p. 341 § 5. R. S. p. 438 § 5. G. L. § 1675. G. S. § 2167.

CITATIONS.

An account due a firm cannot on dissolution and assignment of the account to one of its members be included by him in his individual account against the same debtor so as to avoid the bar of the statute.—*King v. Post*, 12 C. 356, 21 P. 38.

An account for service by a blacksmith where there were no mutual dealings between the parties is not such mutual account as would start the statute running only from the date of the last item.—*Blackmore v. Neale*, 15 A. 51, 60 P. 952.

In an action upon a promissory note items in a counterclaim for board and attention within six years did not draw after them other items beyond that period.—*Beach v. Bennett*, 16 A. 460, 66 P. 567.

4066. Actions barred in three years.

SEC. 6. All personal actions, on any contract not limited by the foregoing sections, or by any other law, in this state, shall be brought within three years after the accruing of the cause of action, and not afterwards.

[Action against notary public on bond barred in three years. Section 4663.]
[Limitation of action for personal injury or death. Section 2059.]

Legislation. Sec. 4066. Act 1861 p. 341 § 6. R. S. p. 438 § 6. G. L. § 1676. G. S. § 2168.

CITATIONS.

An action for breach of covenants in a deed comes within the provisions of this section.—*Hayden v. Patterson*, 39 C. 18, 88 P. 438.

4067. Statute applies to setoffs.

SEC. 7. All the provisions of this chapter shall apply to the case of any debt or contract, alleged, by way of set-off, on the part of a defendant; and the time of limitation of such debt shall be computed, in like manner as if an action had been commenced therefor, at the time when the plaintiff's action accrued.

Legislation. Sec. 4067. Act 1861 p. 341 § 7. R. S. p. 438 § 7. G. L. § 1677. G. S. § 2169.

4068. Actions for penalty or forfeiture barred in one year.

SEC. 8. All actions and suits, for any penalty or forfeiture of any penal statute brought by this state, or any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within one year next after the offense is committed and not after that time.

Legislation. Sec. 4068. Act 1861 p. 342 § 8. R. S. p. 438 § 8. G. L. § 1678. G. S. § 2170.

CITATIONS.

The general rule in civil actions is that the statute must be pleaded or it is deemed waived; but in an action for a penalty a defendant is entitled to the benefit of the statute under a plea denying plaintiff's cause of action.—*Atchison etc. R. Co. v. Tanner*, 19 C. 562, 36 P. 542.

This section cited in holding that the statute to be available as a bar to the prosecution of a writ of error in the supreme court must be specially interposed.—*Haley v. Elliott*, 20 C. 202, 37 P. 28.

This section is applicable to an action against directors of a corporation for failure to file annual reports required by sec. 911.—*Clough v. Rocky Mt. Oil Co.*, 25 C. 528, 55 P. 812.

CITATIONS CONTINUED.

Actions against directors of corporations for failure to file annual report are barred in one year from the date when the report should have been filed.—*Dart v. Hughes* (July 1910), 109 P. 954.

If bank directors are in default as to filing statement when a demand is made for the payment of a check the statute commences to run from the date of the demand.—*Larsen v. James*, 1 A. 316, 29 P. 184.

If a report was not made when the debt was contracted the liability of directors attached at the instant it was contracted and the statute then commenced to run.—*Colo. F. & I. Co. v. Lenhart*, 6 A. 514, 41 P. 834.

The statute begins to run at the time of the default of the directors in failing to file a report and not at the time the debt against the corporation matures or is made payable.—*Hazellon v. Porter*, 17 A. 3, 67 P. 170.

4069. Application of the limit in last above section.

SEC. 9. The preceding section shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute.

Legislation. Sec. 4069. Act 1861 p. 342 § 9. R. S. p. 438 § 9. G. L. § 1679. G. S. § 2171.

4070. Statute applies in equity.

SEC. 10. Whenever there is a concurrent jurisdiction in the courts of common law and in courts of equity, of any cause of action, the provisions of this chapter limiting the time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits hereafter to be brought for the same cause in the court of chancery.

[Limitation on bringing writ of error, three years, Code, section 436.]

Legislation. Sec. 4070. Act 1861 p. 342 § 10. R. S. p. 439 § 10. G. L. § 1680. G. S. § 2172.

CITATIONS.

This section cited in holding that under the facts a party was not guilty of laches in a suit to set aside sheriff's deeds.—*Great West M. Co. v. Woodmas of Alston Co.*, 12 C. 60, 20 P. 771.

CITATIONS CONTINUED.

When the cause of action in an equitable proceeding is one for which plaintiff might have resorted to a common law remedy the six year statute is applicable.—*Dunne v. Stotesbury*, 16 C. 91, 26 P. 334.

Where the holder of a note did not exercise the option to declare the whole debt due the statute did not begin to run upon the failure to pay an installment of interest.—*First Nat. Bank v. Park*, 37 C. 305, 86 P. 106.

4071. When above section not applicable.

SEC. 11. The last section shall not extend to suits over the subject matter of which a court of equity has peculiar and exclusive jurisdiction, and which subject matter is not cognizable in the courts of common law.

Legislation. Sec. 4071. Act 1861 p. 342 § 11. R. S. p. 439 § 11. G. L. § 1681. G. S. § 2173.

CITATIONS.

This section cited in holding a plaintiff not guilty of laches in a suit to set aside sheriff's deeds.—*Great West M. Co. v. Woodmas of Alston Co.*, 12 C. 60, 20 P. 771.

4072. Relief on ground of fraud—Three years.

SEC. 12. Bills for relief, on the ground of fraud, shall be filed within three years after the discovery by the aggrieved party, of the facts constituting such fraud, and not afterwards.

Legislation. Sec. 4072. Act 1861 p. 342 § 12. R. S. p. 439 § 12. G. L. § 1682. G. S. § 2174.

CITATIONS.

The complaint must show that the discovery of the fraud was made within three years next preceding the commencement of the action and must allege not only ignorance of the fraud but when and how it was discovered.—*Pipe v. Smith*, 5 C. 156-159. *Bradbury v. Davis*, 5 C. 267. *Bohm v. Bohm*, 9 C. 104, 10 P. 792. *Arnett v. Coffey*, 1 A. 39, 27 P. 616. *Fox v. Lipe*, 14 A. 262, 59 P. 851.

This section cited in holding the plaintiff not guilty of laches in a suit to set aside sheriff's deeds.—*Great West M. Co. v. Woodmas of Alston Co.*, 12 C. 60, 20 P. 771.

CITATIONS CONTINUED.

The court cannot give this statute such a construction as will permit a party in all cases to stand idle until the limitation of the statute is nearly run and then claim that he is excused from all laches.—*Great West M. Co. v. Woodmas of Alston Co.*, 14 C. 98, 23 P. 911.

Limitations to land claims in equity, and the obligation of claimants to take notice of public laws, records and acts hostile to their rights considered in a Mexican land grant case.—*De Mures v. Gilpin*, 15 C. 76, 24 P. 568.

An action to set aside a decree of water adjudication obtained without notice and which modified a former decree was one for relief on the ground of fraud and was within this section if any.—*Peck Lateral D. Co. v. Pella Irr. D. Co.*, 19 C. 224, 34 P. 989.

In an action to enforce an express trust and to compel an accounting by the trustee this section is not applicable. If any section applies it is sec. 4073.—*French v. Woodruff*, 25 C. 350, 54 P. 1015.

In an action by a stockholder of a bank to set aside fraudulent transfers of stock by the bank to certain of its directors, held that this and sec. 4073 must be constructed together. This section limits the time of an action based on fraud where no trust or fiduciary relations exist and sec. 4073 limits the time where such relations do exist.—*Morgan v. King*, 27 C. 548, 558, 63 P. 419. *Ballard v. Golob*, 34 C. 426, 83 P. 379.

This section does not apply where co-owners of a mining claim procure a patent to the exclusion of another co-owner.—*Ballard v. Golob*, 34 C. 426, 83 P. 379.

An action on a note and incidentally to foreclose a lien on shares of stock, although involving the sufficiency of the assignment of the stock was not within this section.—*Equitable Security Co. v. Johnson*, 36 C. 382, 85 P. 841.

This section does not apply to an action to have the foreclosure of a trust deed set aside for fraud.—*Harlow v. Hitzler*, 40 C. 117, 90 P. 93.

A complaint filed in July 1887 to rescind a deed made in September 1883 on the ground of fraud which does not show when the fraud was discovered was barred by this section.—*Walker v. Pogue*, 2 A. 153, 29 P. 1019.

When an action has been commenced in time and the judgment reversed it is only when it has been reversed on a writ of error that the plaintiff may under sec. 4078 commence a new action within one year after the reversal.—*Arnett v. Coffey*, 5 A. 562, 39 P. 894.

CITATIONS CONTINUED.

The statute does not begin to run until a cause of action has accrued, although the party may have discovered the fraud before the cause of action accrued. When the statute begins to run against an action by a creditor to set aside a voluntary conveyance.—*Rose v. Dunklee*, 12 A. 413, 416, 56 P. 345.

An action to compel the transfer of mining stock under a certain agreement was held to come not within this section but within sec. 4073.—*Farris v. Wirt*, 16 A. 4, 63 P. 947.

Where one deeded a lot to his wife and afterwards deeded to the plaintiff and later the wife deeded to another the statute began to run from the time the wife deeded.—*Arnett v. Berg*, 18 A. 344, 71 P. 638.

An action on a note and to foreclose a trust deed, and incidentally to cancel a release deed, is not within this section.—*Murto v. Lemon*, 19 A. 319, 75 P. 161.

4073. In certain trusts, five years.

SEC. 13. Bills of relief, in case of the existence of a trust not cognizable by the courts of common law, and in all other cases not herein provided for, shall be filed within five years after the cause thereof shall accrue, and not after.

[Action to recover estate sold by executor. Section 7189.]

Legislation. Sec. 4073. Act 1861 p. 342 § 13. R. S. p. 439 § 13. G. L. § 1683. G. S. § 2175.

CITATIONS.

But for the allegations of fraud in a complaint this section would have been applicable. These allegations brought the action within sec. 4072.—*Pipe v. Smith*, 5 C. 156-159.

This section cited in an action seeking to declare a trust upon government land entered by an administrator.—*Filmore v. Reithman*, 6 C. 131.

An action to remove the cloud of a tax deed to vacant land does not accrue until the deed is recorded.—*Morris v. St. Louis Nat. Bank*, 17 C. 241, 29 P. 805.

The statute does not begin to run against a resulting trust until it is repudiated and knowledge of such repudiation brought home to the cestui que trust. Payment of taxes and redemption from tax sale not a repudiation.—*Warren v. Adams*, 19 C. 11, P. 608.

In an action to enforce an expressed trust and to compel an accounting by the trustee this section, if any, applies and not sec. 4072.—*French v. Woodruff*, 25 C. 351, 54 P. 1015.

CITATIONS CONTINUED.

This and sec. 4072 should be construed together. The latter limits the time within which an action based on fraud must be brought where no trust or fiduciary relations exist and this section limits the time where such relations do exist.—*Morgan v. King*, 27 C. 558, 63 P. 419.

Where co-owners of a mining claim procured a patent and excluded another co-owner an action by the excluded co-owner could be brought within five years. But the cause of action did not accrue until the trust was repudiated and knowledge of such repudiation brought home to such excluded co-owner.—*Ballard v. Golob*, 34 C. 426, 83 P. 379.

In an action to cancel an excess sale of water rights in a canal company, held the cause of action accrued immediately after the conveyance of such excess rights and was barred by this section.—*Patterson v. Ft. Lyon Canal Co.*, 36 C. 178, 84 P. 808.

A tax deed does not until recorded set in motion this section nor sec. 5733. Neither section is applicable where the deed is void upon its face.—*Sayre v. Sage*, 47 C. 567, 108 P. 164.

The statute does not begin to run until the trustee shall have repudiated or denied the trust.—*Quinn v. Kellogg*, 4 A. 160, 35 P. 51.

So long as property remains in common and neither party is in default no cause of action arises between them and the statute of limitations does not apply.—*Waterbury v. Fisher*, 5 A. 363, 38 P. 846.

The statute will not begin to run against an action by a creditor to set aside a voluntary conveyance until his right of action has accrued by reducing his claim to final judgment and the return of his execution nulla bona.—*Rose v. Dunklee*, 12 A. 413, 416, 56 P. 345.

In an action to compel the transfer of certain mining stock held that the agreement involved a trust under this section.—*Farris v. Wirt*, 16 A. 5, 63 P. 947.

Action to enforce redelivery of deed. Statute applies to express or resulting trust. Action barred in five years after defendant's refusal to surrender deed.—*Dennison v. Barney* (Feb. 1911), 113 P. 519.

4074. Concerning disabilities—Death—Heirs—Representatives.

SEC. 14. If the person entitled to file any bill specified in the two last sections be, at the time of discovering the facts constituting such fraud, or at time the cause for filing such bill shall

accrue, under any of the disabilities enumerated in this chapter, the time during which such disabilities shall continue shall be excepted from the limitations contained in the two last sections in the same manner and with like effect as such time is herein excepted from the limitations prescribed for commencing actions at law; and in case of the death of the person so entitled, during such disability, or before the expiration of the time herein limited for filing such bills, the same may be filed by the heirs or representatives of such person, as the case may require, within the same time as is allowed in this chapter for commencing actions at law in the like cases.

Legislation. Sec. 4074. Act 1861 p. 342 § 14. R. S. p. 439 § 14. G. L. § 1684. G. S. § 2176.

4075. Infants—Married women—Insane—Absent, etc.

SEC. 15. If any person entitled to bring any of the actions before mentioned in this act shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the time in this chapter respectively limited, after the disability shall be removed.

Legislation. Sec. 4075. Act 1861 p. 342 § 15. R. S. p. 439 § 15. G. L. § 1685. G. S. § 2177.

We apprehend that the reservation as to married women is abrogated by § 4182

CITATIONS.

Evidence which was considered sufficient to bring a plaintiff within the class exempted by this section as insane.—*Warren v. Adams*, 19 C. 527, 36 P. 608.

Whether the "married womans' act" so-called, should be construed as a statute in *pari materia* and has the effect of withdrawing married women from the operation of this section mentioned but not decided.—*Hayden v. Patterson*, 39 C. 18, 88 P. 438.

4076. Cause of action without the state—Six years.

SEC. 16. It shall be lawful for any person against whom an action shall be commenced in any court of this state, wherein the cause of action accrued without this state, upon a contract or agreement expressed or implied, or upon a sealed instrument in writing,

or upon a judgment or decree rendered in any court without this state, more than six years before the commencement of this action in this state, to plead the same in bar of the action in this state; *Provided*, That if said judgment or decree rendered without this state be based upon a cause of action which had accrued more than six years prior to the commencement of the action on such judgment or decree in this state, and the said judgment or decree had been rendered without this state more than three months prior to the bringing of such action thereon in this state, it shall be lawful for any person against whom any action or such judgment or decree shall be brought, to plead the same in bar thereof; and

Provided, further, That no defendant shall be allowed to plead the fact that the cause of action on which such judgment or decree was based accrued more than six (6) years, and that such judgment or decree was rendered without this state more than three (3) months before the commencement of said action thereon in this state, unless the defendant shall be a bona fide resident of this state; and

Provided, further, That if at any time after a period of six (6) months from and after the passage of this act any action, suit or proceeding be brought against any bona fide resident of this state in the courts of any other state, territory or jurisdiction beyond the limits of this state upon any debt, contract, demand or liability that at the time of the commencement of such action, suit or proceeding was wholly barred by the statutes of limitations of this state so that no action, suit or proceeding could be commenced upon the same in any of the courts of this state, and a judgment or decree should be rendered upon any such debt, contract, demand or liability in such other state, territory or jurisdiction, and any action, suit or proceeding should afterwards be commenced in this state upon such a judgment or decree so rendered against said defendant and said defendant should still be a bona fide resident of this state, it shall be lawful for such defendant to plead in bar to any such action that said judgment or decree had been so recovered upon a debt, contract, demand or liability that was wholly barred by the statute of limitations in this state at the time the

action, suit or proceeding was commenced upon the same in such other state, territory or jurisdiction.

Legislation. Sec. 4076. Act 1899 p. 248 § 1, amending Act 1895 p. 239 § 1, which superseded Act 1879 p. 109 § 1. G. S. § 2178, which superseded G. L. § 1686. R. S. p. 439 § 16, Act 1861 p. 343 § 16.

The Act 1895 p. 239 § 1 brings in the text to the end of the second proviso. Act 1899 supra added the last proviso.

A special Act of 1861 p. 340, approved the same date as the section on p. 343, made a uniform limitation of 5 years on suits on foreign debts. This special Act was repealed by R. S. p. 686.

CITATIONS.

Where a defendant pleads the statute of limitations to a declaration in debt upon a specialty a reply setting up a new promise is bad on general demurrer.—*Hittson v. Davenport*, 3 C. 597. (Reversed 4 C. 170.)

The several states may bar by statute remedies upon contracts made in sister states. On a note made in this state for an indebtedness arising without the state the cause of action accrued in this state.—*Hawse v. Burgmire*, 4 C. 314.

This section of the act of 1879 referred to in considering the necessary replication concerning bankruptcy proceedings taken by the defendant.—*Brooks v. Bates*, 7 C. 577, 4 P. 1069.

Under this section of R. S. 1866 a claim against an estate was barred after two years.—*Morse v. Clark*, 10 C. 218, 14 P. 328.

The act of 1879 which repealed G. L. sec. 1686 was regularly passed.—*Massachusetts Ins. Co. v. Colo. L. & T. Co.*, 20 C. 3, 36 P. 793.

A defendant not permitted to set up the statute by amendment on the ground that the district court had decided that the act of 1879 did not repeal this section as it was in the G. L.—*Owers v. Olathe M. Co.*, 6 A. 8, 39 P. 980.

4077. When action survives, one year to bring suit.

SEC. 17. If any person entitled to bring any of the actions before mentioned herein shall die before the expiration of the time herein limited therefor, and if the cause of action does by law survive, the action may be commenced by the executor or administrator of the deceased person, as the case may be, at any time within one year after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

Legislation. Sec. 4077. Act 1861 p. 343 § 17. R. S. p. 440 § 17. G. L. § 1687. G. S. § 2179.

CITATIONS.

This and section 4078 do not apply to an action brought by a decedent in his life time which was not abated by his death or for any other reason enumerated in such sections.—*Barlow v. Hitzler*, 40 C. 117, 90 P. 93.

4078. Failure of process—Abatement—Reversal, etc.—One year.

SEC. 18. If in any action duly commenced within the time herein limited, and allowed therefor, the process shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it was committed, or if the process shall be abated, or the actions otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall be arrested; or if the judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

Legislation. Sec. 4078. Act 1861 p. 343 § 18. R. S. p. 440 § 18. G. L. § 1688. G. S. § 2180.

CITATIONS.

This and sec. 4077 do not apply to an action brought by a decedent in his life time which was not abated by his death or for any other reason enumerated in such sections.—*Barlow v. Hitzler*, 40 C. 117, 90 P. 93.

When an action has been commenced within time and the judgment recovered has been reversed it is only when it has been reversed on a writ of error that the plaintiff may under this section commence a new action. The year begins to run from the date of the reversal.—*Arnett v. Coffey*, 5 A. 560, 39 P. 894.

4079. Parties in joint interest not bind each other by promise.

SEC. 19. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the pro-

visions of this chapter, so as to be chargeable, by reason only, of any acknowledgment or promise made by any other or others of them.

Legislation. Sec. 4079. Act 1861 p. 343 § 19. R. S. p. 440 § 19. G. L. § 1689. G. S. § 2181.

4080. Action barred as to one of several defendants.

SEC. 20. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any others or other of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Legislation. Sec. 4080. Act 1861 p. 343 § 20. R. S. p. 440 § 20. G. L. § 1690. G. S. § 2182.

4081. Abatement for non-joinder—Effect of bar.

SEC. 21. If in any action on contract, the defendant shall plead in abatement that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial that the action was by reason of the provisions of this chapter barred against the person so named in the plea, the said issue shall be found for the plaintiff.

Legislation. Sec. 4081. Act 1861 p. 344 § 21. R. S. p. 440 § 21. G. L. § 1691. G. S. § 2183.

4082. Payment—Endorsement by payee of note, no evidence.

SEC. 22. Nothing in the three preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest made by any person; but no endorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

Legislation. Sec. 4082. Act 1861 p. 344 § 22. R. S. p. 441 § 22. G. L. § 1692 G. S. § 2184.

By Act of 1876 p. 91 a promise or acknowledgment such as to bar the running of the statute was required to be in writing. Repealed 1877, G. L. p. 988.

CITATIONS.

This section establishes a rule of evidence and not a rule of pleading.—*Meyer v. Binkleman*, 5 C. 264.

An indorsement of payment without the assent of the maker will not stop the running of the statute, but the payment by an authorized agent of the maker removes the bar.—*Nat. Bank Boulder v. Rowland*, 1 A. 469, 29 P. 465.

Book entries of a bank admissible as to payments indorsed on a note. Payment by one joint maker will not stop the statute as to the other maker.—*Coulter v. Bank*, 18 A. 446, 72 P. 602.

4083. Payment by one not bind other joint debtors.

SEC. 23. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason only of any payment made by any other or others of them.

Legislation. Sec. 4083. Act 1861 p. 344 § 23. R. S. p. 441 § 23. G. L. § 1693. G. S. § 2185.

CITATIONS.

Payment upon a note by one joint maker will not stop the running of the statute against the other maker and a judgment against him was error.—*Coulter v. Bank*, 18 A. 447, 72 P. 602.

II. CONCERNING REAL ESTATE.

Section.

- 4084. Action to recover lands—Twenty years.
- 4085. Twenty years from time title accrued.
- 4086. When right of action accrues.
- 4087. When action barred in seven years.
- 4088. Heirs, devisees and assigns same rights.
- 4089. Possession under color of title—Payment of taxes—Seven years.
- 4090. Vacant lands—Paper title—Payment of taxes—Seven years.
- 4091. Not applicable to U. S. lands or school lands.
- 4092. Two years after removal of disability.
- 4093. Heirs or successors continue within two years.

4084. Action to recover lands—Twenty years.

SEC. 24. That no person shall commence an action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to bring such action or make such entry first accrued, or within twenty years after he or those from, by or under whom he claims, have been seized or possessed of the premises, except as hereinafter provided.

[Action for recovery of registered land. Section 745.]

Legislation. Sec. 4084. Sec. 1 of Act of 1893 p. 327, entitled:

AN ACT

Limiting the Time for Bringing Actions Respecting Real Estate and to Repeal An Act Entitled "An Act Limiting the Time for Bringing Action Respecting Real Estate." (Approved February 14, 1874.)

There was no section equivalent to the text before 1893.
See notes to § 4089.

CITATIONS.

The act of parliament of the 21st year of James I limiting real actions to 20 years never became the rule of decision in this state.—*Laughlin v. Denver*, 24 C. 261, 50 P. 919.

Before a party claiming under this section can tack his own possession to that of his grantor, the particular premises must have been embraced in the deed or transfer to him.—*Evans v. Welch*, 29 C. 359, 361, 68 P. 778.

This section should be construed as acting prospectively only.—*Edelstein v. Carlile*, 33 C. 56, 78 P. 681. *Connell v. Clifford*, 39 C. 123, 88 P. 851.

4085. Twenty years from time title accrued.

SEC. 25. If such right or title first accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any person from, by, or under whom he claims, the twenty years shall be computed from the time when the right or title so accrued.

Legislation. Sec. 4085. Act 1893 § 2, cited under § 4084.

4086. When right of action accrues

SEC. 26. The right to make an entry or bring an action to

recover land shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say:

First—When any person is so disseized, his right of entry or of action shall be deemed to have accrued at the time of such disseizen.

Second—When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy or other estate intervening after the death of such ancestor or devisor; in which case his right shall be deemed to accrue when such intermediate estate expires, or when it would have expired by its own limitations.

Third—When there is such an intermediate estate, and in all other cases when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time.

Fourth—The preceding clause shall not prevent a person from entering when entitled to do so by reason of any forfeiture or breach of condition; but if he claims under such a title, his rights shall be deemed to have accrued when the forfeiture was incurred or the condition was broken.

Fifth—In all cases not otherwise specially provided for, the right shall be deemed to have accrued when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title upon which the entry or the action is founded.

Legislation. Sec. 4086. Act 1893 § 3, cited under § 4084.

4087. When action barred in seven years.

SEC. 27. Actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual residence thereon for seven successive years, having a connected title in law or equity, deducible of record, from this state or the United States, or from any public officer or other person

authorized by the laws of this state to sell such land for the non-payment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution, or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid; but when the possessor shall acquire such title after taking such possession, the limitation shall begin to run from the time of acquiring title.

[Action for recovery of registered land. Section 745.]

Legislation. Sec. 4087. Act 1893 § 4, cited under § 4084.

CITATIONS.

One holding under sheriff's deed may have title quieted against the execution defendant and his grantee.—*Callbreath v. Hug* (March 1911), 114 P. 298.

4088. Heirs, devisees and assigns same rights.

SEC. 28. The heirs, devisees and assigns of the person having such title and possession, shall have the same benefit of the preceding section as the person from whom the possession is derived.

Legislation. Sec. 4088. Act 1893 § 5, cited under § 4084.

4089. Possession under color of title—Payment of taxes—Seven years.

SEC. 29. Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who shall, for seven successive years, continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

[Title may be registered after seven years' possession. Section 716.]

Legislation. Sec. 4089. Act 1893 § 6, cited under § 4084.

The text is framed on sec. 1 of Act of 1874 p. 177. G. L. § 1694. G. S. § 2186.

Prior to 1874 there was no statutory limitation for recovery of real estate.

The Act 1874 made the limitation five years, with only one year's grace after removal of disabilities. The present text is copied from the statute of Illinois. Starr and C. Ann. Stats. Chap. 83 p. 2599.

CITATIONS.

It is extremely doubtful if this act was intended to apply in cases where the disputed territory is patented ground.—*Lebanon M. Co. v. Rogers*, 8 C. 40, 5 P. 664.

One cannot hold adversely to another when he knows that patent has issued to the person against whom he claims.—*Arnold v. Woodward*, 14 C. 169, 23 P. 446.

"Proper title" in G. S. sec. 2186 meant a "paper title." The phrase "color of title" refers to a paper writing purporting to convey title. It does not mean a perfect paper title.—*Knight v. Lawrence*, 19 C. 431, 36 P. 244. *De Foresta v. Gast*, 20 C. 309, 38 P. 245.

A deed which refers to a map which excludes the lot conveyed does not constitute color of title.—*Laughlin v. Denver*, 24 C. 261, 50 P. 919.

Consideration of insufficient pleading under this section.—*U. S. Security Co. v. Wolfe*, 27 C. 219, 60 P. 638.

Where a junior appropriator of water sets up, against a prior appropriator, rights acquired by adverse user for more than seven years he must show that the adverse user and possession is under a paper title.—*Lower Latham D. Co. v. Loudon I. C. Co.* 27 C. 276, 60 P. 632.

An answer which failed to allege that all taxes legally assessed had been paid was insufficient.—*Eberville v. Leadville etc. Co.*, 28 C. 241, 64 P. 200.

Under this and section 4090 it must be shown that the taxes have been paid for the full period by the person having color of title. Not sufficient if paid in one year by person making no claim.—*Ballard v. Golob*, 34 C. 425, 83 P. 379.

Possession under tax deed and payment of taxes gave a valid title under this and sec. 4090.—*Laws v. Newkirk*, 39 C. 80, 88 P. 861.

The defense of the statute based on one statute will not admit the defense of another statute.—*Connell v. Chfford*. 39 C. 124, 88 P. 851.

Where the owner paid the taxes for one of the seven years no title was acquired under this section.—*Webber v. Wannemaker*. 39 C. 432, 89 P. 782.

CITATIONS CONTINUED.

This section referred to in an action to quiet title.—*Mulford v. Rowland*, 45 C. 174, 100 P. 603.

A deed void for the incompetency of the grantor may be color of title.—*Parker v. Betts*, 47 C. 429, 107 P. 817.

A tax deed until recorded does not constitute color of title so as to set in motion this and sec. 4090.—*Sayre v. Sage*, 47 C. 567, 108 P. 163.

A railroad company may obtain title to its right of way under this section and the state board of equalization may assess such land.—*D. & R. G. R. Co. v. Doelz* (Nov. 1910), 111 P. 595.

This section cited in holding that a deed even though void on its face will make color of title.—*Brinker v. U. P. D. & G. Ry. Co.*, 11 A. 168, 55 P. 208.

4090. Vacant lands—Paper title—Payment of taxes—Seven years.

SEC. 30. Whenever a person having color of title, made in good faith, to vacant and unoccupied land, shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such tax-payer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of the taxes for the term aforesaid shall be entitled to the benefit of this section. *Provided, however*, If any person, having a better paper title to said vacant and unoccupied land, shall during the said term of seven years, pay the taxes assessed on said land for any one or more years during the said term of seven years, then and in that case such person seeking title under claim of taxes paid, his heirs and assigns, shall not be entitled to the benefit of this section.

Legislation. Sec. 4090. Act 1893 § 7, cited under § 4084.

Under § 2 of Act of 1874 p. 178, G. L. § 1695, G. S. § 2187 of like tenor to the text the period was five years.

CITATIONS.

Where the defendant pleads this statute and the plaintiff proves a better title and the payment of taxes for the same

CITATIONS CONTINUED.

period claimed by defendant the plea will be unavailing.—*Morris v. St. Louis Bank*, 17 C. 240, 29 P. 804.

The "color of title" must arise out of some conveyance adverse to the true owner and not from one that constitutes him a trustee for the benefit of the owner.—*Warren v. Adams*, 19 C. 525, 36 P. 608.

While the phrase "color of title" means a paper title it does not mean a perfect paper title.—*De Foresta v. Gast*, 20 C. 309, 38 P. 245.

Where the plaintiff with color of title has paid the taxes for the full period his title is protected by this section.—*Sullivan v. Collins*, 20 C. 532, 39 P. 335.

This section cited in holding that a tax deed though void upon its face may constitute color of title.—*Bennet v. North Colo. etc. Co.*, 23 C. 475, 478, 48 P. 814.

This section contemplates that the color of title must be based on a paper title.—*Durkee v. Jones*, 27 C. 166, 60 P. 618.

Under this and section 4089 it must be shown that the taxes have been paid for the full period.—*Ballard v. Golob*, 34 C. 425, 83 P. 379.

Possession under color of title under tax deed and payment of taxes for the full period entitles one to a decree in an action to quiet title.—*Laws v. Newkirk*, 39 C. 80, 88 P. 861.

A tax deed does not until recorded constitute color of title under this or sec. 4089. Where the tax deed is void upon its face neither of these sections is available as a defense to the action of one deducing title from original sources.—*Sayre v. Sage*, 47 C. 567, 108 P. 164.

A deed even though void on its face will make color of title and will support a plea of the general statute of limitation.—*Brinker v. U. P. D. & G. Ry. Co.*, 11 A. 168, 55 P. 208.

4091. Not applicable to U. S. lands or school lands.

SEC. 31. The two preceeding sections shall not extend to lands or tenements owned by the United States or of this state, not to school and seminary lands, not to land held for the use of religious societies, not to lands held for any public purpose. Nor shall they extend to lands or tenements, when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is under the age of twenty-one years, insane, imprisoned, feme covert, or out of the limits of the United States, and in the employment of the United States or of this state. *Pro-*

vided, Such person shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land, shall within the time last aforesaid, pay to the person or persons who have paid the same, all the taxes with interest thereon, at the rate of twelve per cent. per annum, that have been paid on said vacant and unoccupied land.

Legislation. Sec. 4091. Act 1893 § 8, cited under § 4084.

Framed on sec. 3 of Act of 1874 p. 178, G. L. § 1696, G. S. § 2188. But the limitation after disability removed was only one year and the rate of interest 25 per cent.

It is doubtful whether a married woman in Colorado is a "feme covert" as that phrase was understood at common law.

4092. Two years after removal of disability.

SEC. 32. If at the time when such right of entry or of action upon or for lands first accrues the person entitled to such entry or action is within the age of twenty-one years or if a female of the age of eighteen years, or insane, imprisoned or absent from the United States, in the service of the United States or of this state, such person or any one claiming from, by or under him or her, may make the entry or bring the action at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired.

[When parties become of age. Section 7112.]

Legislation. Sec. 4092. Act 1893 § 9, cited under § 4084.

4093. Heirs or successors continue within two years.

SEC. 33. If the first person entitled to make entry or bring such action, dies during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment has been had of or upon the title, right or action, which accrued to him, the entry may be made or the action brought by his heirs or any person claiming from, by or under him at any time within two years after his death, notwithstanding the time before limited in that behalf has expired.

[Limitation on inheritance tax. Section 5571.]

[Lands sold for taxes. Section 5733.]

Legislation. Sec. 4093. Act 1893 § 10, cited under § 4084.

CHAPTER LXXXVI.

LOCAL OPTION.

Section.

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4094. Definitions of terms employed

SECTION 1. The words and phrases mentioned in this section as used in this act, and in proceedings pursuant hereto, shall, unless the same be inconsistent with the context, be construed as follows:

"Anti-Saloon Territory" shall mean all the territory within the limits of any city, town, ward, ward subdivision, district or precinct in this state, in which, through the action of the qualified electors therein, as provided by this act, the keeping and sale of intoxicating liquors is prohibited, except as provided in this act.

"Towns" shall include "Incorporated Towns."

"Precinct" shall mean any voting precinct or "Election Precinct" in an election district or ward. "Ward Subdivision" shall mean any "Voting Precinct" or "Election Precinct" which is a subdivision of a ward for voting at an election of city officers or any combination of such precincts in any ward, less than the whole ward, forming a contiguous territory.

"Election District" shall mean any "Election District" which is a subdivision of a county or city for voting purposes at an election for county or city officers.

"Political Subdivision" shall mean any city, town, ward, election district, or precinct, as the case may be.

In the phrase "Shall this.....become 'Anti-Saloon Territory?'" the proper word shall be inserted in the blank space so as to designate the political division or subdivision intended to be designated as "Anti-Saloon Territory," such as city, town, ward, district or precinct, and in cases where more than one precinct of a ward or district is intended, the same shall be made

to read "Shall precincts numbered.....(here insert the numbers) of this ward (or district) become 'Anti-Saloon Territory?'" and the same shall be inserted in the petitions filed with the clerk and in the ballots prepared for the submission of such proposition to the voters of any city, town, ward, district or precinct, as provided by this act.

"Clerk" shall mean with reference to cities and towns, the city or town clerk, or the person designated by law to discharge the duties of clerk, as the case may be; and with reference to districts or precincts in counties, it shall mean the county clerk; and with reference to wards and districts or precincts in cities or towns, it shall mean the city or town clerk, or the person designated to discharge the duties of clerk as the case may be; and it shall mean the board of election commissioners of any city, or incorporated town in this state in which there now is or hereafter may be a board of election commissioners, empowered to discharge the duties of clerk, as to such petitions or other matters pertaining to elections.

"Election" shall mean any general election at a time fixed

by law for choosing county, city or town officers, as the case may be; and in no case shall it mean a school election or a special election to fill a vacancy.

"Intoxicating Liquors" shall mean all distilled, spirituous, vinous, fermented or malt liquors. By "Qualified Electors" is meant those who are qualified to register to vote, but it shall not be necessary for the purpose of signing this petition that they shall be registered at the time of signing thereof.

51' Legislation. Sec. 4094. Act 1907 p. 495 § 1, entitled:

AN ACT

Entitled "An Act to Provide for the Creation by Popular Vote of 'Anti-Saloon Territory,' Within Which the Keeping and the Sale of Intoxicating Liquors and the Licensing of Such Keeping and Sale Shall be Prohibited; and for the Abolition by Like Means of Territory so Created; and to Regulate the Keeping and Sale of Such Intoxicating Liquors Within Such Territory; and to Provide Penalties for Violations Thereof; and to Repeal All Acts or Parts of Acts in Conflict Therewith."

Before this Act the issuance or refusal to issue licenses was left to the trustees or council of cities and towns. Sec. 3995.

The terms of that section are not superseded by this local option law in saloon territory. There is also in force § 6729, applying to town annexations, and paragraph 18 of 6525, giving towns and cities power to license, regulate or prohibit the sale of liquors.

CITATIONS.

This act held constitutional. Under sections 1 and 7 there may be a dry precinct in a wet ward or town or city but no wet precinct in a dry ward.—*Schwartz v. Peo.*, 46 C. 275, 278, 104 P. 93-111. (Dissenting opinion 47 C. 483.)

This and secs. 4095, 4096 do not prevent the submission of the question in a newly created district in which no general election had yet been held.—*Adamic v. Peo.* (Feb. 1911), 113 P. 649.

4095. Method of creating anti-saloon territory.

SEC. 2. Upon the filing in the office of the clerk at least thirty days before an election of a petition as in this act provided, directed to such clerk, containing the signatures of qualified electors of any political subdivision in number not less than forty per cent. of the total vote cast in such political subdivision at the last general election therein, for the purpose of submitting to the voters of such political subdivision the proposition "Shall this,

become "Anti-Saloon Territory?" said proposition shall be submitted at such election, as in this act provided, to the voters of such political subdivision, and if a majority of qualified electors voting upon said proposition shall vote "Yes," such political subdivision shall become "Anti-Saloon Territory." Such petition shall be a public document and shall be subject to the inspection of the public. No precinct of a ward shall for the same election be included in more than one petition covering contiguous territory less than a ward, but more than one precinct. This provision shall not apply to the case of a petition covering one precinct only and another petition covering more than one precinct or covering a town, precinct, city or ward within which such precinct is included. In case more than one petition for the same election shall be filed, each covering contiguous territory less than a ward, but more than one precinct and including a precinct in common, the petition which shall be first filed with the clerk shall alone be valid.

Legislation. Sec. 4095. Act 1907 § 2, cited under § 4094.

CITATIONS.

There may be a dry precinct in a wet ward or town or city but no wet precinct in a dry ward.—*Schwartz v. Peo.*, 46 C. 275, 104 P. 93-111. (Dissenting opinion 47 C. 483.)

This and secs. 4094, 4096 do not prevent the submission of the question in a newly created district in which no general election had yet been held.—*Adamic v. Peo.* (Feb. 1911), 113 P. 649.

4096. Form and requirements concerning petition for vote.

SEC. 3. A petition for the submission of said proposition shall be substantially in the following form:

"To the..... (county, city, or town) clerk of the (here insert the corporate or legal name of the county, city or town):

The undersigned, qualified electors of the..... (insert the legal name or correct designation of the political subdivision) respectfully petition that you cause to be submitted at the next election, in the manner provided by law, to the qualified

electors thereof, the proposition: Shall this.....
become "Anti-Saloon Territory?"

Name of signer.....Street number.....

Date of signing.....

Such petition shall consist of sheets having such form printed or written at the top thereof and shall be signed by qualified electors in their own proper persons, only, and opposite the signature of each one his residence address shall be written, and the date of signing the same (and in cities having a population of over ten thousand according to the last preceding census of the United States, the street and number of such residence shall be written). No signature shall be valid or be counted in considering such petition unless these requirements are complied with and unless the date of signing is not more than ninety (90) days preceding the date of filing the same. At the bottom of each sheet of such petition shall be appended an affidavit signed by a qualified elector of the subdivision in which the signer thereof resides, stating his residence address (and in cities having a population of over ten thousand, according to the last preceding census of the United States, stating the street and number of the residence), that the signatures on that sheet of the said petition are genuine, and that to the best of his knowledge and belief, the persons so signing were, at the time of signing said petition, qualified electors of the said city, town, ward, district or precinct, as the case may be; that their respective residences are correctly stated therein and that each signer signed the same on the date set opposite his name. Such affidavit shall be sworn to before some officer authorized to administer oaths, and who resides in the county where such electors reside. Such petition so verified or a copy thereof, duly certified as hereinafter provided, shall be prima facie evidence that the signatures, statement of residence and dates upon such petition are genuine and true, and that the persons signing same are qualified electors of the political subdivision named. Such sheets shall be fastened together in one document, filed as a whole, and when filed shall not be withdrawn or added to. No signature shall be revoked except by a revocation filed with the clerk with whom the

petition is required to be filed, and before the filing of such petition. Upon the request of any one filing such a petition and verified statement, and paying or tendering to the clerk one dollar for each one hundred names, or fractions thereof, signed thereto, together with a copy thereof, the clerk shall immediately compare the original and the copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the day when such original was filed in the office. Whoever, in making the sworn statement above prescribed shall knowingly, wilfully and corruptly swear falsely, shall be deemed guilty of perjury and upon conviction thereof shall be punished accordingly. Whoever forges any name of a signer upon any petition shall be deemed guilty of forgery and upon conviction thereof, shall be punished accordingly.

[Penalty for perjury. Section 1716.]
[Penalty for forgery. Section 1704.]

Legislation. Sec. 4096. Act 1907 § 3, cited under § 4094.

CITATIONS.

The requirement as to residence address is jurisdictional. Distinction between residence address and post office address. Sufficiency of petition. Ditto marks for address permissible.—*Peo. v. Newell* (Feb. 1911), 113 P. 644. *Adamic v. Peo.* (Feb. 1911), 113 P. 649.

One affidavit to different pieces of paper pasted together in one sheet held sufficient.—*Adamic v. Peo.* (Feb. 1911), 113 P. 648.

4097. Notice of submission to be given.

SEC. 4. The clerk with whom any petition shall be filed as provided in this act shall cause notice to be given, in the manner provided by law for giving notice of an election, of the submission of said proposition at the next election to the voters of the political subdivision named in said petition, and publication shall likewise be made in the manner provided by law for the publication of the list of nominations to be voted for at said election; *Provided*, That the failure of such clerk to cause such notice to be given, or the failure to make publication of the submission of

said proposition as above provided, shall not affect the validity or binding force of a vote upon said proposition.

Legislation. Sec. 4097. Act 1907 § 4, cited under § 4094.

4098. Printing proposition on ballots.

SEC. 5. The clerk with whom any petition shall be filed as provided by this act, shall cause said proposition to be plainly printed after the list of candidates upon all the ballots to be used in the election of officers, at the time of the next election, in the political subdivision named in such petition as follows:

Shall this. (city, town, ward, or precinct, as YES []
the case may be), become "Anti-Saloon Territory?" NO []

Place your mark (X) opposite the proposition for which you wish to vote. In case such petition relates to more than one precinct of a ward, and less than the whole ward, said proposition shall be printed as follows:

Shall precincts numbered. (here insert the YES []
numbers) of this ward, become "Anti-Saloon Territory?" NO []
Place your mark (X) opposite the proposition for which you wish to vote.

At the canvass of the ballots in each polling place in each precinct where said proposition is submitted, it shall be the duty of the judges of election to admit to the room, one legal voter selected by the persons managing the interests of those in favor of and one selected by those persons managing the interests of those opposed to said proposition at such polling place, as special watchers of such canvass, with the same rights and privileges now provided by law for watchers appointed by the chairman of political parties, provided such watchers shall be of good character and sober and shall in no wise interfere with such canvass, and said judges and the police officers and other officers of the law shall protect such watchers and see that they are not excluded from the polling place, and at the time of such canvass of the ballot cast upon said proposition said watchers shall be entitled to a position within the guard rail where they can plainly see and read each ballot, and it shall be the duty of such judges to protect them in such posi-

tion. Whenever any method of taking and recording votes at an election other than by means of printed ballots is provided by law, the procedure for taking and recording the votes upon said proposition shall conform to the methods so provided.

Legislation. Sec. 4098. Act 1907 § 5, cited under § 4094.

4099. Method of recording result of vote.

SEC. 6. The clerk shall record in a well bound book, to be kept in his office by himself and his successors, the result of the vote upon said proposition, and such results may be proved in all courts and in all proceedings by such record or by the official certificate of the clerk, and in cases where such record or certificate shows that a majority of the qualified electors voting upon said proposition voted "Yes" the same shall be prima facie evidence that the political subdivision to which such a vote was applicable, has become "Anti-Saloon Territory." The result of the vote under the provisions of this act shall go into effect thirty (30) days after the day of the election at which such vote is cast, which election shall be held and the returns thereof made in conformity with the provisions of the general laws of the state and by the officers of election appointed and qualified under such law.

Legislation. Sec. 4099. Act 1907 § 6, cited under § 4094.

4100. Continuance of anti-saloon territory.

SEC. 7. All the territory within any political subdivision which has become "Anti-Saloon Territory" shall continue to be "Anti-Saloon Territory" throughout its entire extent, notwithstanding any change which may be made in the limits of any such political subdivision, until the qualified electors thereof have voted, according to the provisions of this act, to reverse the vote creating "Anti-Saloon Territory" and the following section shall be construed in harmony herewith.

Legislation. Sec. 4100. Act 1907 § 7, cited under § 4094.

CITATIONS.

Where once any subdivision becomes anti-saloon territory the original status can be restored only by a favorable vote in the

CITATIONS CONTINUED.

identical territory.—*Schwartz v. Peo.*, 46 C. 275, 281, 104 P. 104. (Dissenting opinion 47 C. 486.)

This section cited in dissenting opinion.—*Peo. v. Newell* (Feb. 1911), 113 P. 648.

4101. Method of reversing vote.

SEC. 8. Upon filing in the office of the clerk, at least thirty days before an election in any political subdivision, of a petition directed to such clerk, containing the signatures of qualified electors residing in "Anti-Saloon Territory," in number not less than forty per cent. of the vote cast therein at the last election, to submit to the qualified electors of said territory the proposition "Shall this political subdivision (or district)) reverse its vote creating 'Anti-Saloon Territory?'" (provided such petition corresponds in all other respects with the petition in this act before described), such proposition shall be submitted at such election to the voters of such political subdivision or district and the provisions of section one (1), three (3), four (4), five (5), and six (6) of this act shall apply in all respects so far as applicable to the submission of such proposition to such voters; to the petition; therefore, to the recording of the vote thereon; and to the proof of the petition and vote. If a majority of the qualified electors voting upon such last mentioned proposition in any such political subdivision or district vote "Yes" such political subdivision or district shall cease to be "Anti-Saloon Territory" and all resolutions and ordinances providing for the restricting, regulation or prohibition of the sale of intoxicating liquors or for the issuing of dram-shop licenses, the operation of which was suspended within such political subdivision or district by virtue of the vote therein to become "Anti-Saloon Territory," so far as then in force and with all additions and amendments which in the meantime may have been made thereto shall become and be in force within said political subdivision or district to the same extent, only, however, as the same would then be in force had such political subdivision or district never become "Anti-Saloon Territory." The petition mentioned in this section shall be a public document and shall be subject to the inspection of the public.

[Sections 1, 3, 4, 5 and 6 above referred to are sections 4094, and 4096-4099.]

Legislation. Sec. 4101. Act 1907 § 8, cited under § 4094.

CITATIONS.

Where once any subdivision becomes anti-saloon territory the original status can be restored only by a favorable vote in the identical territory.—*Schwartz v. Peo.*, 46 C. 275, 281, 104 P. 104. (Dissenting opinion 47 C. 486.)

This section cited in dissenting opinion.—*Peo. v. Newell* (Feb. 1911), 113 P. 648.

4102. Vote not subject to reversal within twenty-three months.

SEC. 9. A vote under the provisions of this act in and for any political subdivision upon the proposition "Shall this..... become 'Anti-Saloon Territory?'" or in and for any political subdivision or district upon the proposition "Shall this..... (or district) reverse its vote creating 'Anti-Saloon Territory?'" shall be a bar to the submission to the voters thereof of either of such propositions, as applied to that identical political subdivision or district only, until after the lapse of twenty-three months.

Legislation. Sec. 4102. Act 1907 § 9, cited under § 4094.

CITATIONS.

The limitation upon a re-submission of the question applies only where the proposition is submitted in the identical district in and for which the former vote was taken.—*Schwartz v. Peo.*, 46 C. 276, 281, 104 P. 104. (Dissenting opinion 486.)

The vote of a lesser political subdivision contained in a greater one is no bar to an election on the same question by the greater one.—*Peo. v. Newell* (Feb. 1911), 113 P. 648.

4103. Unlawful to sell intoxicating liquors and to license dram shops in "Anti-Saloon Territory."

SEC. 10. It shall be unlawful to sell intoxicating liquor in any quantity whatever or to grant or issue or cause to be granted or issued, a license to sell intoxicating liquor in any quantity whatever within the limits of any political subdivision or district in this state while the same is "Anti-Saloon Territory," except as here-

inafter provided, and if any such license be granted or issued in violation thereof the same shall be void.

Legislation. Sec. 4103. Act 1907 § 10, cited under § 4094.

4104. Shifts or devices to evade law.

SEC. 11. The selling or giving away of any intoxicating liquor at or within any political subdivision or district while the same is "Anti-Saloon Territory," for the sale or giving away of intoxicating liquor therein, or shift or device to evade any provision of this act shall be held to constitute a violation of this act, and be punished accordingly. The giving away in this act shall not apply to the giving away of intoxicating liquors by a person in his private dwelling; *Provided*, Such private dwelling is not a place of public resort.

Legislation. Sec. 4104. Act 1907 § 11, cited under § 4094.

4105. Penalties respecting clerks and petitions.

SEC. 12. Any clerk who shall refuse or neglect or fail to discharge any duty imposed by this act, and anyone who signs the petition provided for in this act knowing that he is not qualified so to do, or who files with the clerk any such petition or any sheet or other part thereof knowing that it contains the signature of a person or persons not qualified to sign the same, or who receives, requests, demands, or gives, offers or promises any reward for the signing or refraining from signing any such petition, or who by treating or giving intoxicating liquor or anything else, or by threats to injure another in person or property, or by betting or other devices, either directly or indirectly, influences or attempts to influence any one to sign or refrain from signing any such petition, shall be deemed guilty of a violation of the provisions of this act, and shall be punished accordingly.

Legislation. Sec. 4105. Act 1907 § 12, cited under § 4094.

4106. Prosecution for offenses.

SEC. 13. All offenses defined or mentioned in this act may be prosecuted by indictment or by the information filed in any

court of record having criminal jurisdiction, or the district attorney or any of his deputies may file original informations upon their own affidavits based upon information and belief, and such information need not be otherwise verified; or any justice of the peace of the proper county shall have jurisdiction of all offenses arising under the provisions of this act; and in case of conviction, the offender shall stand committed to the county jail until the fine and costs are fully paid.

Legislation. Sec. 4106. Act 1907 § 13, cited under § 4094.

4107. Exceptions—Provisions respecting druggists.

SEC. 14. The phrase, "Intoxicating Liquors," as used herein shall be construed to include any fermented, distilled, malt, vinous or other intoxicating liquors, but it shall be a good defense in any prosecution under this act, to show that the sale in question was at retail, by a regular licensed pharmacist, for exclusively known medicinal purposes, and that it was sold only in good faith upon written prescription issued, signed and dated in good faith by a duly licensed physician in active practice, and that the prescription was used but once.

Legislation. Sec. 4107. Act 1907 § 14, cited under § 4094.

4108. Penalty for selling liquor in anti-saloon territory—Second offense.

SEC. 15. Whoever shall, by himself or another, either as principal, clerk, or servant, directly, or indirectly, sell, barter or exchange any intoxicating liquor in any quantity whatever, contrary to the provisions of this act, within the limits of any political subdivision or district in this state, while the same is "Anti-Saloon Territory," or whosoever shall in any other manner violate any of the provisions of this act, shall, for the first offense, be fined not less than one hundred (100) dollars, nor more than two hundred (200) dollars, or be imprisoned in the county jail for not less than ten (10) days nor more than thirty (30) days, or both, in the discretion of the court.

Any person convicted of a second or any subsequent violation of the provisions of this act, shall, upon conviction thereof be fined not less than two hundred (200) dollars, nor more than five hundred (500) dollars, and be imprisoned in the county jail for not less than thirty (30) days, nor more than ninety (90) days.

Legislation. Sec. 4108. Act 1907 § 15, cited under § 4094.

4109. Refund of license.

SEC. 16. Whenever "Anti-Saloon Territory" has been created under the provisions of this act, there shall be refunded to all keepers of dram shops, saloons or other places where intoxicating liquors are sold within said territory, a pro rata part of the amount paid either to the state, county or municipality for such license, the said refund to be pro rated for the number of days for which said license has yet to run before the expiration of the period for which said license was granted; *Provided, however,* That said license was regularly issued according to law by the state, county or municipality granting the same.

Legislation. Sec. 4109. Act 1907 § 16, cited under § 4094.

4110. Application of act.

SEC. 17. The provisions of this act shall be deemed and held to apply to all cities of the state of Colorado organized and existing under special charter, the same as those organized and existing under the general law regulating towns and cities. *Provided,* Nothing in this act contained shall be so construed as to bring any territory wherein the sale of intoxicating liquors has been forever prohibited by law under the provisions of this act.

Legislation. Sec. 4110. Act 1907 § 17, cited under § 4094.

4111. Repeal—Saving clause.

SEC. 18. All acts or parts of acts in conflict with any of the provisions of this act, are hereby repealed, but an ordinance passed

by a municipal corporation under the authority given in section 4403, Colorado statutes, page 1234, volume 3, 1905 edition, prohibiting the selling or giving away of intoxicating or malt liquors shall remain in full force and effect until thirty days after an election has been held in accordance with the provisions of section 2 of this act.

[Section 4403 referred to is section 6525, paragraph 18.]

[Section 2 above referred to is section 4095.]

Legislation. Sec. 4111. Act 1907 § 18, cited under § 4094.

CHAPTER LXXXVII.

LOTTERIES AND GIFT ENTERPRISES.

- I. LOTTERIES.—4112-4119.
 - II. GIFT ENTERPRISES.—4120-4124.
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I. LOTTERIES.

Section.

- 4112. Lotteries unlawful—Penalty for promoting, advertising, etc.
 - 4113. Lotteries for lands, lots, mines, etc., forbidden—Penalty.
 - 4114. Advertising by sign, symbol or words—Penalty.
 - 4115. Newspaper publishing—Penalty.
 - 4116. Selling, bartering, furnishing tickets—Aiding—Penalty.
 - 4117. What not necessary to prove on trial—Presumption—Conclusive evidence.
 - 4118. Indictment good in words of statute.
 - 4119. Purchaser, competent witness.
-

4112. Lotteries unlawful—Penalty for promoting, advertising, etc.

SECTION 1. It shall not be lawful hereafter for any person, persons, association of persons, or corporation to engage in or otherwise promote any lottery or gift enterprise of any nature, or for any purpose whatsoever. Every person who shall knowingly engage in or in anywise promote any lottery or gift enterprise, whether in his own behalf, or as the agent or employe of another, or of a corporation, or who shall for himself, or as such agent or employe, knowingly sell, give, or exchange or offer to sell, give or exchange any ticket, share, certificate, receipt, or other token in any lottery or gift enterprise, or who for himself or as such agent or employe, shall knowingly advertise any lottery or gift enterprise, in any manner whatsoever, shall be guilty of a misdemeanor,

and, on conviction, fined in the sum of not less than one hundred dollars, and imprisoned in the county jail for a period of not less than thirty days.

[Lotteries prohibited by Constitution, article 18, section 2.]

Legislation. Sec. 4112. G. S. § 2196, Act 1881 p. 178 § 1, entitled:

AN ACT

Concerning Lotteries; Prohibiting the Advertisement and Sale of Lottery Tickets, and Prescribing Penalties Therefor.

CITATIONS.

Lottery defined.—A consideration must be paid for a chance to draw a prize by lot.—*Cross v. Peo.*, 18 C. 323, 32 P. 822.

This section and sec. 2, art. XVIII of the constitution do not warrant a city ordinance prohibiting the giving of trading stamps to customers.—*Denver v. Frueauff*, 39 C. 37, 88 P. 395.

4113. Lotteries for lands, lots, mines, etc., forbidden—Penalty.

SEC. 2. No person or persons, corporation or association, shall, within this state, open, set on foot, carry on, promote, or draw, publicly or privately, any lottery, game or device of chance of any nature or kind whatsoever, or by whatever name it may be called, for the purpose of exposing, setting to sale, or disposing of any houses, lands, tenements, mines, or real estate, or any money, goods, or things in action. Whoever violates this provision, shall, for each offense, upon conviction, upon indictment, be fined not less than one hundred dollars, or imprisoned in the county jail not less than sixty days, or both, in the discretion of the court.

Legislation. Sec. 4113. G. S. § 2197, Act 1881 § 2, cited under § 4112.

CITATIONS.

Lotteries are prohibited by the constitution and statute. The scheme described in the answer in this case for disposing of town lots was a lottery.—*Branham v. Stallings*, 21 C. 216, 40 P. 397.

4114. Advertising by signs, symbols or words—Penalty.

SEC. 3. No person or persons, association or corporation, shall, by printing, writing, setting up of a sign, symbol, emblem, or in

any other way or manner whatsoever, advertise or publish an account of any such lottery, game or device, or indicating or stating when or where the same is to be drawn, or the prizes therein, or any of them, or the price of a ticket or share therein, or where any ticket or part of a ticket, or share or part of a share therein, may be obtained, or in any way aid or assist in the same. Whoever violates either of these provisions, shall, upon conviction, upon indictment, be fined not exceeding one hundred dollars, or be imprisoned in the county jail not less than thirty days, or both, in the discretion of the court.

Legislation. Sec. 4114. G. S. § 2198, Act 1881 § 3, cited under § 4112.

4115. Newspapers publishing—Penalty.

SEC. 4. And it shall be unlawful for any person, persons, association or corporation, being the owner or owners of any newspaper published in this state, to publish in any such newspaper any advertisement of any lottery, game or device of chance, whether the drawing be to take place in this state or not. Whoever violates this provision shall, upon conviction, upon indictment, be fined not less than one thousand dollars.

Legislation. Sec. 4115. G. S. § 2199, Act 1881 § 4, cited under § 4112.

4116. Selling, bartering, furnishing tickets—Aiding—Penalty.

SEC. 5. No person or persons, corporations or associations, within this state shall vend, sell or barter, furnish, supply, procure, or cause to be furnished or procured, or offer to vend, sell, barter, furnish, supply, procure or cause to be furnished or procured, or have or keep in his possession with intent to sell, vend, barter, furnish or supply, to or for any person or persons, corporation or association, any ticket, or part or share of a ticket or any paper or instrument purporting to be a ticket or part of a ticket, or to be a share or interest in any ticket, or any certificate of any share or interest in any ticket, or in any paper purporting to be a ticket of or in any such lottery, device or game of chance; nor shall any person aid, abet, or assist in the violation of either of said provisions. Whoever violates either of these provisions shall, upon conviction, upon indictment, be fined not exceeding one

hundred dollars, or imprisoned in the county jail not exceeding sixty days, or both, in the discretion of the court.

Legislation. Sec. 4116. G. S. § 2200, Act 1881 § 5, cited under § 4112.

4117. What not necessary to prove on trial—Presumption—Conclusive evidence.

SEC. 6. It shall not be necessary in the trial of any suit, prosecution, or examination under the provisions of this act, to prove the existence of any lottery, game, or device of chance, in which any ticket, share or part of a ticket, purports to have been issued, or the actual signing of any such ticket or share, or of any such pretended ticket or share, of any pretended lottery, device, or game of chance; nor that any ticket, share or interest was signed or issued by the authority of any manager or officer, or of any person assuming to have authority as manager; but in all cases, proof of the sale, furnishing, bartering, or procuring of any ticket, share or interest therein, or of any instrument purporting to be a ticket, or part of any ticket, or of the possession or keeping thereof, shall be conclusive evidence that such ticket, or share or interest, was signed and issued according to the purport thereof.

Legislation. Sec. 4117. G. S. § 2201, Act 1881 § 6, cited under § 4112.

4118. Indictment good in words of statute.

SEC. 7. Any indictment or information under this act shall be deemed and adjudged good and sufficient which describes the offense in the words of this act, although it does not set out the name or location of such lottery, device or game of chance, nor set out in words and figures the ticket, policy or device, or part or interest sold, bartered or exchanged, or offered, or kept, or advertised to be sold, bartered, or exchanged, or furnished, or supplied.

Legislation. Sec. 4118. G. S. § 2202, Act 1881 § 7, cited under § 4112.

4119. Purchaser, competent witness.

SEC. 8. The purchaser of any such ticket, part or share of

such ticket, or interest, share or chance in such lottery, game or device, shall in all respects be a competent witness to prove any offense under this act.

Legislation. Sec. 4119. G. S. § 2203, Act 1881 § 8, cited under § 4112.

II. GIFT ENTERPRISES.

Section.

4120. Unlawful to participate in gift enterprises.

4121. Gift enterprise includes giving tickets.

4122. Includes accepting tickets.

4123. Exchanging goods for tickets.

4124. Penalty for violation.

4120. Unlawful to participate in gift enterprise.

SEC. 9. It shall be unlawful for any person, persons, partnership, association or corporation to engage in, promote, aid, abet or patronize any gift enterprise of any nature, or for any purpose whatsoever, or to sell, give, receive, accept or exchange gift enterprise tickets, coupons, stamps, trading stamps or other device.

Legislation. Sec. 4120. Act 1905 p. 241 § 1, entitled:

AN ACT

Concerning Gift Enterprises, Prohibiting the Sale or Giving Away, Receipt or Exchange of Gift Enterprise Tickets, Coupons, Stamps, Trading Stamps or Other Devices, and Prescribing Penalties for the Violation of This Act.

4121. Gift enterprise includes giving tickets.

SEC. 10. The term "Gift Enterprise," as herein employed, shall include the selling, giving, presenting or distributing by any person, persons, partnership, association or corporation to any person, persons, partnership, association or corporation, in consideration of a purchase by such person, persons, partnership, association or corporation of any article of goods, wares or merchandise, of any ticket, coupon, stamp, trading stamp or other device, which entitles the recipient thereof to demand or receive from any person, persons, partnership, association or corporation, any article of goods, wares or merchandise, indefinite, undescribed, uncertain,

undetermined or unknown to the purchaser at the time of the receipt and acceptance of said ticket, coupon, stamp, trading stamp or other device.

Legislation. Sec. 4121. Act 1905 § 2, cited under § 4120.

4122. Includes accepting tickets.

SEC. 11. The term "Gift Enterprise" as herein employed, shall include the receipt or acceptance by a purchaser of goods, wares or merchandise, from the vendor thereof, in consideration of said purchase, of any ticket, coupon, stamp, trading stamp or other device, which entitles the purchaser to demand or receive in exchange therefor, any article of goods, wares or merchandise, indefinite, uncertain, undescribed or unknown to the said purchaser, at the time of the receipt or acceptance of said ticket; coupon, stamp, trading stamp or other device.

Legislation. Sec. 4122. Act 1905 § 3, cited under § 4120.

4123. Exchanging goods for tickets.

SEC. 12. The term "Gift Enterprise" as herein employed, shall include the exchanging of any article of goods, wares or merchandise for any tickets, coupons, stamps, trading stamps, or other devices, acquired by the holder thereof, in consideration of the purchase by him or her of any other article of goods, wares or merchandise; the nature or value of the goods, wares or merchandise to be so exchanged, being either indefinite or unknown to said purchaser at the time of the receipt and acceptance of said stamp in connection with said purchase.

Legislation. Sec. 4123. Act 1905 § 4, cited under § 4120.

4124. Penalty for violation.

SEC. 13. Any person, persons, partnership, association or corporation, his or its agent, servant or employe, violating any of the provisions of the four preceding sections of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in the sum of not more than five hundred dollars, or be imprisoned in the county jail for a period of not more than six months.

Legislation. Sec. 4124. Act 1905 § 5, cited under § 4120.

CHAPTER LXXXVIII.

LUNATICS.

- I. COMMITMENT AND DISCHARGE—EXAMINERS.—4125-4141.
- II. CRIMINAL INSANE.—4142-4146.
- III. INSANE ASYLUM.—4147-4161.
- IV. HOME FOR MENTAL DEFECTIVES.—4161-A-4161-G.

I. COMMITMENT AND DISCHARGE—EXAMINERS.

Section.

- 4125. Definition of term lunatic.
- 4126. Contracts of lunatics void—Party dealing with guilty of swindling.
- 4127. Proceedings to commit insane person at large.
- 4128. Notice of inquest by citation—Inquest of lunatic charged with crime—Support of insane pauper.
- 4129. Lunatic committed to asylum—Estate liable for care—County liable for care.
- 4130. Discharge of person restored to reason.
- 4131. Discharged pauper furnished with ten dollars, clothes and railroad ticket.
- 4132. Relief of feeble-minded person.
- 4133. County commissioners provide care.
- 4134. Funds for insane how kept.
- 4135. Expenses by county—Accounts—Exemplifications—Auditor's duty—Warrant.
- 4136. Payment of warrants.
- 4137. Action in behalf of state for expenses.
- 4138. Insane person not confined in jail unless violent.
- 4139. Examiner in lunacy—Certificate—Lunatic not committed to examiners' institution.
- 4140. Penalty for acting as medical examiner without authority.
- 4141. Examination fee.

[For appointment, qualifications, powers, duties and liabilities of conservator, see Chapter 157, Wills and Estates.]

4125. Definition of term "Lunatic."

SECTION 1. The term lunatic, as used in this chapter, shall be construed to include idiots, insane and distracted persons, and every person who by reason of intemperance, or any disorder or unsoundness of mind, shall be incapable of managing and caring for his own estate.

Legislation. Sec. 4125. R. S. p. 448 § 34. G. L. § 1731. G. S. § 2237.

CITATIONS.

In a proceeding for the appointment of a conservator it seems that the respondent's estate is not "involved" in the sense in which the word is used in the constitution.—*Wyman v. Felker*, 18 C. 383, 33 P. 157.

4126. Contracts of lunatics void—Party dealing with guilty of swindling.

SEC. 2. All contracts, agreements, and credits with or to any such lunatic, shall be absolutely void as against such person, his or her heirs, or personal representatives; but persons making such contracts or agreements with any such lunatic shall be bound thereby at the election of his or her conservators. If any person shall, by trading, bartering or gaming with any lunatic person, knowing him or her to be such, or by any other device, obtain possession of or title to any lands, tenements, goods or chattels of any such lunatic, he shall be deemed guilty of swindling, and upon conviction thereof shall be liable to all the penalties of swindling, as in other cases; and all property so acquired shall be restored to such lunatic, his or her conservators, heirs, executors or administrators.

[Lunatic can not vote. Section 2148.]

Legislation. Sec. 4126. R. S. p. 445 § 26. G. L. § 1723. G. S. § 2229.

4127. Proceedings to commit insane person at large.

SEC. 3. Whenever any reputable person shall file with the county court a complaint duly verified (or whenever complaint duly verified shall be filed with the county court by an authorized medical examiner, as hereinafter provided) alleging that any per-

son in said county is so insane or distracted in his mind, as to endanger his own person and property or the person and property of another, or others if allowed to go at large, the county court, or the judge thereof, shall forthwith issue an order in the name of the people, directing any person who shall be appointed by said county or judge, or any officer of said court, to execute the same by immediately taking such patient into custody; *Provided*. That when any sheriff or constable shall find within his county any such insane person at large, it shall be his duty to apprehend such insane person without an order of court; and when any alleged insane person shall be so arrested by or without an order of court, he or she shall be taken forthwith before the county court or the judge thereof and if the alleged insane person so elect, an inquest as provided for in section 1 shall be held without delay and until the determination of such inquest, such alleged insane person shall be confined in a hospital or if there is no suitable hospital in said county, in some convenient and suitable place to be designated, by the said court or judge. If upon such inquest it shall be found in the verdict of the jury that such alleged insane person is so insane or distracted in mind, as to endanger his or her own person or property, or the person or property of another or others, if allowed to go at large, it shall be the duty of the county court to order that the patient be immediately transferred to the state insane asylum. The said judge of the county court shall at the same time designate some trained attendant to accompany said insane patient to the state insane asylum, and every female patient, shall be accompanied by a female attendant, unless accompanied by her husband, father, brother, or son, and said attendant shall have the entire control, care and custody of said patient until delivered to the superintendent of the state insane asylum; *Provided*. That, upon the application of any relative or friend of such insane person and it satisfactorily appearing to the court that such applicant is a proper and suitable person to have the custody of such patient, it shall be the duty of the county court to permit the said relative or friend to accompany the said patient to the said state insane asylum as before provided;

Provided, That the court may, in its discretion, instead of committing said patient to the state insane asylum, designate some

hospital, or if there be no hospital in said county, some other suitable place where the said patient shall be confined, and the judge of said county court shall order that said patient be treated with all the skill possible; that he shall be properly cared for and at all times be furnished with the proper attendants and necessities;

Provided, That it shall further be the duty of said court in this proceeding, or at any time thereafter, if and when it shall be shown to the court as provided by section 1 of this act that such insane person has any real or personal estate, to appoint a conservator therefor. Upon the discharge of any lunatic or insane person in case there has been appointed a conservator for such lunatic or insane person, the county court shall immediately issue a summons requiring the conservator to appear and settle his account.

[Section 1 referred to is section 1 of L. '93, p. 331, but was repealed by L. '03, p. 535, sec. 174.]

[Examination upon lunacy inquest as to nativity. Section 124.]

[Examination of insane convict. Section 4892.]

Legislation. Sec. 4127. Act 1893 p. 332 § 3, amending Act 1885 p. 266 § 1, which amended Act 1879 p. 90 § 2. G. S. § 2231, amending G. L. § 1725. R. S. p. 446 § 28.

Sec. 174 of the Act of 1903 p. 537, being the Act which codified the law of Wills and probate matters generally, cited under § 7040, repealed among many other Acts, G. S. §§ 2204-2225, 2227 and 2228, printed under the lunatics chapter of the G. S., and also the whole of the Act of 1889 p. 238, entitled:

AN ACT

To Provide for the Conservation and Management of the Estate, in Colorado, of Lunatics Residing Without the United States.

It has been contended that the title of the 1903 Act referred to was not broad enough to cover the repeal, but the commissioner who made the compilation of 1908 decided that the repeal was good, and did not print them.

Most of the sections were substituted by the provisions of the 1903 Act, but § 2204, the most important of them, being the only one which provided for the examination of an ordinary lunatic not violent nor criminal, remains wholly unsubstituted, although many persons have been examined and committed under the section as if it were in full force.

The section referred to was Act 1893 p. 331 § 1, which amended G. S. § 2204, Act 1879 p. 90 § 1, which substituted G. L. § 1698, R. S. p. 442 § 1.

4128. Notice of inquest by citation—Inquest of lunatic charged with crime—Support of insane pauper.

SEC. 4. No inquest of lunacy shall be held until at least ten days' previous notice shall have been given to the alleged luna-

tic, and to the guardian ad litem to be appointed by the court, by citation issuing out of the county court, setting forth the substance of the complaint, and the time and place when and where such inquisition will be held, and requiring the alleged lunatic to attend, unless the alleged lunatic shall waive such notice and elect that the inquest shall sooner be held; *Provided*, That when the guardian ad litem, appointed by the court, and the examiner in lunacy endorse upon the citation issued to the alleged lunatic that it would be for the best interests of the said alleged lunatic to hold an inquest of lunacy forthwith, or upon less than ten days' notice, upon the approval of the county judge, the said alleged lunatic not objecting thereto, the inquest of lunacy may be held forthwith, or upon less than ten days' notice, and without further notice or citation; *Provided, further*, That every inquest concerning the lunacy of any person shall be brought and conducted in the name of the people of the state of Colorado, and shall be prosecuted by the county attorney of the respective counties, unless there be no such county attorney, or said county attorney be absent, unable or unwilling to act, when and in such cases, the county judge shall appoint a duly qualified attorney or other suitable person to prosecute said inquest;

And, provided, further. That no inquest shall be had as to the lunacy of any person charged with a criminal offense until like notice has been given to the district attorney or other officer charged by law to prosecute such offense, and that nothing in this chapter shall be so construed as to exempt the relatives and next of kin to any insane pauper from their liability for his or her support; and all moneys expended by any county for the maintenance of any such insane person, under the provisions of this chapter, may be recovered of the person or persons who are or may be liable by law for his or her maintenance.

Legislation. Sec. 4128. Act 1905 p. 289 § 1, amending Act 1879 p. 91 § 3. G. S. § 2232, which amended G. L. § 1726. R. S. p. 446 § 23.

4129. Lunatic committed to asylum—Estate liable for care—County liable for care.

SEC. 5. In case any person who is adjudged to be a lunatic, as hereinbefore provided, has no friend or relative, who will as-

sume the custody and care of said lunatic, the county court shall order the said lunatic to be placed in the state insane asylum, or other hospital or place, suitable for the treatment of the insane. If such lunatic has any estate in the hands of his conservator, an account for the keeping of said lunatic shall be rendered by the proper authorities of said asylum or hospital or the owner or owners of any other place where he has been treated, to the county court, by which said commitment was ordered, and upon the further order of said court the conservator shall pay said account, out of any moneys in his hands belonging to said estate, and which may be lawfully so applied. If said lunatic has no estate, said account shall be presented to the county commissioners of said county, whose duty it shall be, on satisfactory proof of the justice of such account to issue their warrant on the treasurer of the county therefor. *Provided, however,* That no such account for treatment in the state lunatic asylum shall be so presented or audited.

Legislation. Sec. 4129. Act 1893 p. 332 § 2, amending G. S. § 2226. G. L. § 1720. R. S. p. 445 § 23.

The title of the Act of 1893 reads:

AN ACT

To Revise Certain Acts and Parts of Acts Relating to the Care, Custody and Discharge of the Insane, and the Judicial Proceedings Affecting the Same, to Provide for Medical Examiners in Lunacy Inquests, to Prescribe Their Duties, and Provide Penalties for Violation Thereof, to Prescribe Regulations for Future Buildings at the State Insane Asylum, and to Provide for the Separate Confinement of the Criminally Insane. For Designating the Classes Thereof, and Their Consignment, and to Repeal All Acts in Conflict Therewith.

Section 1 of this Act was repealed as noted under § 4127.

4130. Discharge of person restored to reason.

SEC. 6. If any reputable person present to the county court, of any county, where any person is confined for treatment as a lunatic, or insane person, other than in the state insane asylum, an application in writing for the discharge of any such patient, setting forth that the said patient has been restored to reason, said

court shall immediately cause the fact to be inquired of by two reputable physicians, to be appointed by the said court, at least one of whom shall not be officially connected with the institution, where said patient is confined, and if upon such inquiry it shall be found, that such person has been restored to reason, he or she shall be immediately set at liberty. If any person confined in the state insane asylum shall be restored to reason, the superintendent thereof shall discharge such person from said confinement and shall forthwith transmit to the judge of the county court, by which said patient was adjudged insane, a notice in writing setting forth that such lunatic or insane person has been restored to reason, and has been discharged and the said superintendent shall have the further power to issue a probationary discharge whenever he believes the same to be for the best interest of any patient, under his control. The expenses of attending any inquest held under this chapter, shall be paid out of the estate of such lunatic by the conservator, thereof, upon the order of the county court or if there be no such estate, or if any original inquest shall result in the discharge of the person, who is alleged in the complaint to be a lunatic, the county commissioners of the proper county shall upon the filing with them, of the certificate of the county court of the county in which said inquest was held, of the amount of such expenses, allow the same and a warrant therefor shall be drawn on the county treasurer in payment of the same, and the county commissioners of such county, shall make and certify to the auditor of state, a statement of such expenses paid as aforesaid, and the state auditor shall thereupon draw a warrant in favor of such county for the amount thereof, on the state treasurer, payable from any moneys appropriated for the payment of the expenses of lunacy inquest and transportation of the indigent insane. Upon the discharge of any lunatic or insane person in case there has been appointed a conservator for such lunatic or insane person, the county court shall immediately issue a summons requiring the conservator to appear and settle his account.

Legislation. Sec. 4130. Act 1893 p. 332 § 3, amending Act 1885 p. 264 § 1, which amended G. S. § 2230. G. L. § 1724. R. S. p. 446 § 27. Title cited under § 4129.

CITATIONS.

This section does not require the court to commit a female patient to a female custodian when restrained in the county of her commitment; she may be committed to the sheriff, and he may recover from the county for taking care of the lunatic.—*Garfield County v. Adams*, 16 A. 515, 66 P. 684.

4131. Discharged pauper furnished with ten dollars, clothes and railroad ticket.

SEC. 7. Whenever any person confined in the insane asylum of this state shall be restored to reason and discharged according to the provisions of section 1 of an act entitled an act to amend sections 27 and 28 of chapter 69 of the General Statutes of the state of Colorado entitled lunatics, approved April 2d, 1885: It shall be the duty of the superintendent of said insane asylum or any person acting for him as such officer to furnish such insane pauper who has been adjudged restored to reason with the sum of ten dollars in money, a suit of clothes not exceeding in value \$15.00 and a non-transferable railroad ticket at the expense of the state from the place at which said insane asylum is located "said sums of money to be paid from insane asylum fund" to any railroad station (which may be designated by said restored pauper) within this state but without the county in which the asylum is located. The superintendent of said asylum shall indorse upon the back of such railroad ticket the words "Furnished by the state." It shall not be lawful for such person to sell or transfer such ticket nor for any person except the one for whom it is furnished to use the same.

[L. '87, referred to was amended by L. '93, p. 332, section 3, and is section 4130 of this compilation.]

Legislation. Sec. 4131. Act 1891 p. 245 § 1, entitled:

AN ACT

In Relation to Insane Paupers Confined in the Insane Asylum of This State Who Have Been Restored to Reason, and Who Are Discharged From Said Asylum, and to Provide Means for Said Paupers to Return to Their Homes or Friends, or Obtain Work for Their Support.

4132. Relief of feeble-minded person.

SEC. 8. Whenever a relative, guardian or friend of a feeble-

mind person shall make application to the judge of any county court of the state for the relief, care, custody, training and education of said feeble-minded person, the judge of the county court of the county wherein such person resides, if he shall deem such feeble-minded person a proper subject for care, custody, relief, training and education, may issue an order authorizing the board of county commissioners to provide for the care, custody, relief, training and education of such feeble-minded person. The judge shall accompany said order with a certificate stating the name in full, age, place of nativity, the town, city or county in which said feeble-minded person resides, and whether such feeble-minded person, his parents, relatives or guardians are able to provide for his support, in whole or in part, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the feeble-minded person and acquainted with the facts and circumstances stated.

Legislation. Sec. 4132. Act 1901 p. 177 § 1, entitled:

AN ACT

To Provide for the Care and Custody of Feeble-Minded Persons, and to Authorize Boards of County Commissioners to Make Expenditures Therefor.

4133. County commissioners provide care.

SEC. 9. The board of county commissioners, upon receipt of said order from the county judge, shall provide for the care, custody, relief, training and education of such feeble-minded person under the care of a public or private institution provided for the treatment of feeble-minded persons in this or other state, and the board of county commissioners shall appropriate from the fund provided for the care and relief of the poor, not otherwise appropriated, such sums as shall be necessary.

Legislation. Sec. 4133. Act 1901 § 2, cited under § 4132.

4134. Funds for insane, how kept.

SEC. 10. All sums of money received into the state treasury, from the collection of the tax for the support of lunatic paupers, as provided in the chapter concerning revenue, shall be kept sep-

arate and apart from all other funds in said treasury, and shall be designated as the "Fund for the support of the insane," and such fund shall be disbursed as follows:

[For tax for insane fund, see section 4150.]

Legislation. Sec. 4134. R. S. p. 447 § 30. G. L. § 1727. G. S. § 2233.

**4135. Expenses by county—Accounts—Exemplifications—
Auditor's duty—Warrant.**

SEC. 11. Whenever any county shall hereafter expend any sum of money in the necessary support, maintenance or preserving in custody of any lunatic pauper, such county shall be reimbursed from the fund for the support of the insane. The county commissioners of such county shall present an account of all such expenditures, expressing the items of such expenditure, the name of the pauper for whose support the same was made, and the time of such expenditure, to the auditor of the state, and together with such account they shall present the accounts of the person to whom such sum of money was paid, with attached thereto the affidavit of such person that such account is true and just, that the services charged for were actually and necessarily rendered in the support and keeping of such pauper, and that he hath received from such county payment therefor; also, together with said account shall be presented an exemplification of the record of the proceedings in the county court of such county, whereby such pauper was adjudged to be a lunatic, and a certificate from the county judge that such lunatic hath not been since adjudged sane as provided by law; *Provided*, That such exemplification shall be filed and preserved by the auditor in his office, and at any subsequent presentation of any claim for the support of the same lunatic, it shall not be necessary to renew such exemplification. Upon the presentation of such account, verified as aforesaid, and upon proof, by the affidavit of two or more of such county commissioners, that such lunatic hath no estate and no relation within the state, so far as known or believed by them, or none of sufficient ability to maintain him or her, the auditor, if nothing appear to show that such claim is fraudulent or factitious, shall allow the same and draw his warrant upon the treasury for the amount so allowed,

payable out of the insane fund.* That until such time as the state of Colorado shall have provided a place for the custody and subsistence of lunatic paupers, the same shall be transported to some convenient asylum, either within or out of the limits of this state, where such pauper will receive such attention and treatment as she or he may require. The expense necessarily incurred in and about the transportation of such lunatic pauper, as well also his or her bills at the asylum, shall be borne and paid by the county of which such lunatic pauper is a resident, the same upon proper vouchers presented for that purpose to be repaid to such county out of the state fund for the support of the insane.

Legislation. Sec. 4135. G. S. § 2234. G. L. § 1728. Act 1874 p. 179. § 1, amending R. S. p. 447 § 31.

The amendment adds all that follows the star.

4136. Payment of warrants.

SEC. 12. All such warrants shall be paid as other warrants are, in the order in which the same are presented.

Legislation. Sec. 4136. R. S. p. 448 § 32. G. L. § 1729. G. S. § 2235.

4137. Action in behalf of state for expenses.

SEC. 13. If at any time after the payment of any such account for the support of any lunatic pauper, it shall appear that such lunatic had, at the time, relatives within the state, bound by law, and of sufficient ability, to support him or her, an action shall lie in behalf of the state to recover from such relative all such sums of money so expended.

[For support of paupers by relatives see section 4781.]

Legislation. Sec. 4137. R. S. p. 448 § 33. G. L. § 1730. G. S. § 2236.

4138. Insane person not confined in jail unless violent.

SEC. 14. That no insane person or persons of unsound mind shall be confined in any city or county jail or lock-up by any sheriff or constable, unless the said person is violent and his absolute safety demands such confinement, and then only upon an order from the county court or judge thereof; and under no conditions shall said person be confined in any jail or lock-up for a longer

period than ten days. And any person or officer who shall confine or cause to be confined any person of unsound mind in any city or county jail or lock-up, except upon the order of the county court or judge thereof, except as in this section provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not less than ten nor more than ninety days, or both by such fine and imprisonment.

Legislation. Sec. 4138. Act 1893 p. 335 § 4, cited under § 4129.

4139. Examiner in lunacy—Certificate—Lunatic not committed to examiner's institution.

SEC. 15. It shall not be lawful for any physician to testify to the insanity of any person for the purpose of securing his commitment to custody unless said physician be of reputable character, a graduate of some incorporated medical college, a permanent resident of the state, and in the actual practice of his profession. The possession of such qualifications shall be certified by the judge of a court of record, and such certificate shall constitute such physician an examiner in lunacy for the purposes of this act. A copy of said certificate shall be filed in the office of the clerk of the county court of the county in which such physician resides. It shall further be unlawful for any examiner in lunacy to testify to the insanity of any person for the purpose of committing him to any asylum or institution devoted to the treatment of the insane, of which said examiner is either a proprietor or officer, or a regular medical attendant. *Provided*, That this provision shall not be held to prevent the superintendent of the state insane asylum from testifying in lunacy cases.

Legislation. Sec. 4139. Act 1893 § 5, cited under § 4129.

4140. Penalty for acting as medical examiner without authority.

SEC. 16. Any person who shall act as such medical examiner without having complied with the provisions of this act shall be punished by a fine of not less than fifty nor more than three hundred dollars, or by imprisonment in the county jail for not

less than thirty days or more than ninety days, or by both such fine and imprisonment for each and every such offense.

Legislation. Sec. 4140. Act 1893 § 6, cited under § 4129.

4141. Examination fee.

SEC. 17. Each and every medical examiner in lunacy inquests shall receive for his services an examination fee in the sum of not to exceed ten dollars and mileage at the rate of ten cents per mile for each and every mile necessarily traveled to and from the place of examination, to be paid by warrants drawn upon the county treasurer, as in other cases of expense in lunacy inquests.

Legislation. Sec. 4141. Act 1893 § 7, cited under § 4129.

II. CRIMINAL INSANE.

Section.

4142. Ward for criminal insane.

4143. Criminal insane classified.

4144. Superintendent notify wardens of penal institutions of ward.

4145. Transfer to penitentiary or reformatory on recovery.

4146. Repeal—Saving clause.

4142. Ward for criminal insane.

SEC. 18. There shall be established at the Colorado state insane asylum a ward for the separate confinement and care of the criminal insane.

Legislation. Sec. 4142. Act 1893 § 10, cited under § 4129.

4143. Criminal insane classified.

SEC. 19. The following classes of patients shall be designated as patients to be confined in said criminal ward:

First—Dangerous persons who have committed or shall attempt to commit murder, arson, rape, robbery or other high crimes or misdemeanors.

Second—Those charged with committing either of the crimes

before mentioned who are believed to feign insanity or of whose insanity there may be so great a doubt as to require the investigation of examiners.

Third—Those acquitted of such crimes on the ground of insanity, who shall be adjudged by the court trying the offense as dangerous persons to be at large.

Fourth—Those charged with the commission of either of such crimes and becoming insane before trial or sentence.

Fifth—Those becoming insane while in prison after conviction of any crime, and continuing insane throughout the term of sentence who shall not have friends or relatives to whom such persons may be delivered at the expiration of sentence.

Sixth—Insane convicts generally whose insanity shall have been ascertained and who may be transferred in accordance with the laws of the state.

Legislation. Sec. 4143. Act 1893 § 11, cited under § 4129.

4144. Superintendent notify wardens of penal institutions of ward.

SEC. 20. The superintendent of the state insane asylum shall immediately upon the preparation of the ward for the criminal insane as in this act provided, notify the wardens of the state penitentiary and the state reformatory of such fact, whereupon the said wardens or either of them shall transfer all persons in their or his custody, who may have been adjudged to be insane, as provided by law, to the state insane asylum, by delivering such persons into the custody of the superintendent thereof.

[Examination of insane convict. Section 4892.]

[Transfer of insane convict from reformatory. Section 6224.]

Legislation. Sec. 4144. Act 1893 § 12, cited under § 4129.

4145. Transfer to penitentiary or reformatory on recovery.

SEC. 21. Upon the recovery of any person who has been transferred from the state penitentiary or state reformatory, as in this act provided, and a satisfactory examination having been made, as in other cases of lunacy inquests, it shall be the duty of the superintendent of such asylum to notify the warden of the

state penitentiary or state reformatory, as the case may be, who shall transfer said person to the place of his former commitment for the purpose of serving out his sentence, if the same be not expired.

Legislation. Sec. 4145. Act 1893 p. 338 § 13 cited under § 4129.

4146. Repeal—Saving clause.

SEC. 22. All acts and parts of acts inconsistent with this act are hereby repealed, but such repeal shall not affect pending proceedings nor the validity of any past act of any court of record concerning lunatics or insane persons or their estates, in any way whatsoever.

Legislation. Sec. 4146. Act 1893 p. 338 § 14, cited under § 4129.

III. INSANE ASYLUM.

Section.

- 4147. Asylum established.
- 4148. Superintendent and commissioners—Site of asylum—Duties of commissioners.
- 4149. Female patients—Maintenance.
- 4150. Tax of one-fifth mill.
- 4151. Board of lunacy commissioners—Appointment—Term—Compensation.
- 4152. Duties of board.
- 4153. Meetings of board—Failure of commissioner to attend meetings.
- 4154. Superintendent—Qualifications—Duties—Compensation—Bond—Employes.
- 4155. Resident physicians.
- 4156. State treasurer ex officio treasurer.
- 4157. Certificate of insanity issued by court—Contents.
- 4158. All salaries and bills audited—Warrants on insane fund.
- 4159. Superintendent and commissioners report annually—Contents—Publication.
- 4160. Admission of patients for treatment.
- 4161. Specifications for buildings.

4147. Asylum established.

SEC. 23. There is hereby established the Colorado insane asylum, for the treatment and cure of such persons as may become insane from any cause.

Legislation. Sec. 4147. G. S. § 2238. Act 1879 p. 87 § 1, entitled:

AN. ACT

To Establish the Colorado Insane Asylum, and Providing for Its Location.

4148. Superintendent and commissioners—Site of asylum—Duties of commissioners—Pay.

SEC. 24. It is hereby made the duty of the governor to appoint the superintendent and board of commissioners of the Colorado insane asylum immediately upon the passage of this act, and it shall thereupon become the duty of the said commissioners to select a site for the said asylum at or near the city of Pueblo, in the county of Pueblo, and state of Colorado, and such site to be not less than forty acres; *Provided*, That the site for said asylum shall be donated to the state by the citizens of Pueblo; and they are hereby authorized to receive gifts or otherwise of lands for the use and benefit of the state in reference to the site and building for said asylum. The site shall be susceptible of irrigation, and not too remote from good water of sufficient quality and quantity to furnish a supply for all necessary use. Upon selecting such site, the said commissioners shall report the facts as to the same to the governor, and he shall cause the title to be made to the state with as little delay as possible. The said commission may lease or build or purchase a temporary building for immediate use. The commissioners shall receive for their services herein named the sum of one hundred dollars each, and mileage of twenty cents for each mile traveled in the selection of such site. As soon as the site shall be selected and title made to the state, the superintendent shall cause proper designs and plans of the grounds and buildings to be made, and shall proceed to lease or construct temporary buildings, which shall be opened for use as speedily as practicable.

Legislation. Sec. 4148. G. S. § 2242. Act 1879 p. 87 § 5, cited under 4147.

4149. Female patients—Maintenance.

SEC. 25. That all such female patients committed according to law, shall be received at the said asylum and building, when the same has been completed and up to the capacity of said building to provide accommodations for such patients, provided, that for and during the years 1897 and 1898 and until an appropriation has been made for their support by the state, the counties sending such people and patients, shall pay to the board of insane asylum commissioners the actual cost of maintaining such patients respectively, and that the said board shall make and cause bills and vouchers for the actual cost of the maintenance and detention of such female patients, to be sent to the board of county commissioners of the county from which any such patient has been sent, and said board of commissioners shall, at their first meeting thereafter, allow the said bills and draw the warrants of the county therefor, payable to the board of insane asylum commissioners.

Legislation. Sec. 4149. Act 1897 p. 82 § 4.

This is an isolated section found in an appropriation Act.

4150. Tax of one-fifth mill.

SEC. 26. There shall be levied and assessed upon all taxable property in the state, real and personal, for the creation and support of such asylum as herein provided, a tax of one-fifth (1-5) of a mill on each and every dollar, to be known as the insane tax; such revenue to be assessed and collected in like manner with other revenues of the state.

Legislation. Sec. 4150. Act 1879 p. 89 § 6, cited under 4147. G. S. § 2243.

CITATIONS.

The act of 1885 declaring a four mill tax for state property did not repeal this section.—*Peo. v. Scott*, 9 C. 423, 12 P. 609.

4151. Board of lunacy commissioners—Appointment—Term—Compensation.

SEC. 27. The management of said asylum shall be vested in a state board of lunacy commissioners, to be composed of three

members, no two of whom shall reside in the same judicial district, and said commissioners shall be appointed by the governor and confirmed by the senate, and shall hold their office for the term of six years, unless sooner removed by the governor for cause, and until their successors are appointed and qualified and they shall receive six hundred (600) dollars each per annum, payable quarterly. Immediately upon the passage of this act the governor shall appoint three commissioners, one for two years, one for four years, one for six years; thereafter each appointment shall be for the full term of six years, except it be to fill a vacancy, and then it shall be for the unexpired term for which such commissioner is appointed.

Legislation. Sec. 4151. Act 1899 p. 257 § 1. The text is a substitute for § 2, Act 1879, cited under § 4147, which was repealed by § 8, Act 1899 p. 260.

4152. Duties of board.

SEC. 28. The board of lunacy commissioners shall have full control and supervision of all the property and over the grounds and buildings of the institution, and shall have the entire government and management of the same.

They shall prescribe and publish all rules and by-laws for the management of the affairs of the asylum and its inmates, and for the government of its officers and employes, and shall make proper provision for the reception, treatment, discharge and transfer either from or to other institutions, or from the asylum to family care, and the return therefrom of all inmates who may be committed to the asylum, and said board shall keep in a book provided for that purpose a full and complete record of their acts and doings as such commissioners, in which book, among other things, shall be kept the date of each visitation of the asylum by the board in a body, or by individual members thereof, and the general condition of the asylum and its inmates.

Legislation. Sec. 4152. Act 1899 p. 257 § 2.

4153. Meetings of board—Failure of commissioner to attend meetings.

SEC. 29. The commissioners shall hold quarterly meetings

at the asylum for the transaction of the business and affairs entrusted to their care, which meetings are to be held on the first Tuesday in the months of March, June, September and December of each year, and, if any commissioner shall fail to attend the regular meetings of the board for a period of one year after his appointment, his office shall thereby become vacant, and shall be so declared by resolution of the board, and a certified copy of such resolution shall forthwith be transmitted by the board to the governor, who thereupon shall fill the vacancy by appointment.

Legislation. Sec. 4153. Act 1899 p. 258 § 3.

4154. Superintendent — Qualifications — Duties—Compensation—Bond—Employees.

SEC. 30. The commissioners shall appoint a superintendent who shall hold his office during their pleasure, and who shall be a physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of its profession and with at least five years' actual experience in a hospital for the treatment of the insane. The superintendent shall reside at the asylum and shall give his entire time and attention to the discharge of his official duties and shall receive such compensation as shall be fixed by the commissioners, not to exceed the sum of three thousand (3,000) dollars per annum and maintenance. He shall give a bond in the sum of five thousand (5,000) dollars, conditioned for the honest and faithful discharge and performance of his duties, said bond to be approved by the commissioners. The commissioners may further provide for an assistant superintendent who shall be a physician of at least five years' practice in his or her profession, and for such other assistants and employees as may be necessary, and they shall prescribe their duties and fix their respective compensation. All such assistants and employees shall be selected and appointed by the superintendent, subject to the approval of the commissioners, and they shall hold their positions subject to such rules and regulations as the commissioners may prescribe. *Provided*, That nothing in this act shall be construed as affecting the tenure of office of the present superintendent for causes originating prior to the passage of this act.

Legislation. Sec. 4154. Act 1899 p. 258 § 4.

4155. Resident physicians.

SEC. 31. The commissioners shall have the power to appoint two or more resident physicians, one of whom shall be a woman, who shall serve without compensation, except room, board and washing, which shall be furnished at the asylum.

Legislation. Sec. 4155. Act 1899 p. 259 § 5.

4156. State treasurer ex-officio treasurer.

SEC. 32. The state treasurer shall be ex-officio treasurer of the asylum and he shall receive all moneys accruing from all sources and apply the same to the fund for the insane to be disbursed as the law directs.

Legislation. Sec. 4156. Act 1899 p. 259 § 6.

4157. Certificate of insanity issued by court—Contents.

SEC. 33. The judge of the court committing a person to the said asylum, shall in addition to the order of commitment, issue a certificate under the seal of the court, showing the name, age, sex, nativity and occupation of the person so committed, and further showing the place of residence of such person, how long such person has resided in Colorado, the place of residence of such person next before coming to Colorado, the name of the person making the petition for commitment, the names of the witnesses examined upon the trial of such person for insanity, and the names of the jurors before whom such person was tried; and if the person so committed is a poor or indigent person, and it affirmatively appears upon the face of said certificate or otherwise that the person so committed had not prior to such commitment acquired a legal residence in the state, then it shall be the duty of the commission of lunacy, by and with the consent of the governor, to return such insane person either before or after his admission to the insane asylum, to the country or state to which he belongs, or in which he resided prior to coming to Colorado, and for this purpose the said commission may expend so much of the money appropriated for the care of the insane as may be necessary.

[Deportation of lunatic aliens. Sections 120-124.]

Legislation. Sec. 4157. Act 1899 p. 259 § 7.

4158. All salaries and bills audited—Warrants on insane fund.

SEC. 34. The salaries of all officers, employes, the expenses of the asylum, and all bills incurred in regard thereto authorized by law, shall be audited by the state auditor quarterly, and warrants therefor drawn upon the state treasurer, to be paid out of the insane fund.

Legislation. Sec. 4158. G. S. § 2240. Act 1879 § 3, cited under § 4147.

4159. Superintendent and commissioners report annually—Contents—Publication.

SEC. 35. The superintendent and board of commissioners shall make a report to the governor on or before the first day of December in each and every year, showing the condition of the asylum financially, the number, age, sex, occupation, residence, treatment and state of reform of all persons admitted from the date of the opening of the asylum, or from the date of the last report, together with such other facts and opinions as their experience and observation may prove and may be deemed of interest to the public; and the governor shall cause said reports to be published, and he shall present them to the next general assembly.

Legislation. Sec. 4159. G. S. § 2241. Act 1879 § 4, cited under § 4147.

4160. Admission of patients for treatment.

SEC. 36. The superintendent or keeper of any hospital or other institution for the treatment of the insane or feeble-minded may receive and detain therein as a boarder and patient any person who desires to submit himself to treatment and makes written application therefor but whose mental condition is not such as to render it legal to grant a certificate of insanity in his case, but no such boarder shall be detained more than three days after having given notice in writing of his intention or desire to leave the asylum or hospital. Such person so presenting himself for treatment, shall pay to the proper authorities of such asylum or hospital, such a sum of money for care and treatment, equal to the cost per capita of care and treatment of the inmates of said asylum or hospital.

Legislation. Sec. 4160. Act 1893 p. 336 § 8, cited under § 4129.

4161. Specifications for buildings.

SEC. 37. That on and after the passage of this act all new or additional buildings erected upon the grounds of the present state insane asylum shall be of moderate size on the "Cottage Plan." Each building shall be designed to accommodate not less than fifty patients and not more than one hundred patients. Patients in the state insane asylum shall be classified and assigned by the superintendent to the buildings to be erected.

Legislation. Sec. 4161. Act 1893 p. 337 § 9, cited under § 4129.

IV. HOME FOR MENTAL DEFECTIVES.**Section.**

- 4161-A. Object of home.
- 4161-B. Management—Commissioners—Compensation.
- 4161-C. Superintendent—Assistant—Clerks, teachers, etc.
- 4161-D. Site for home—Construction—Report.
- 4161-E. Inmates—Payment—Power of courts to commit.
- 4161-F. Endowment fund.
- 4161-G. May receive gifts, etc.

4161-A. Object of home.

SEC. 37a. There is hereby established the state home and training school for mental defectives. The essential object of said school and home shall be the mental, moral, physical education and training of feeble-minded children and the treatment and care of persons so mentally defective as to be incompetent to care for themselves or their property.

Legislation. Sec. 4161-A. § 1 of Act of 1909 p. 180, entitled:

AN ACT

To Establish and Maintain a State Home and Training School for Mental Defectives and Making an Appropriation Therefor.

4161-B. Management—Commissioners—Compensation.

SEC. 37b. The management of the said state home and training school for mental defectives shall be under the supervision of a board of three commissioners, who shall be residents and electors

of the state of Colorado, who shall have full control thereof, as hereinafter provided. The board of commissioners shall be appointed by the governor, by and with the consent of the senate, as soon as this act becomes effective, and not more than two of the commissioners shall be of the same political party. The commissioners first appointed shall hold office, one for the term of two years, one for the term of four years, and one for the term of six years, and afterwards each commissioner shall be appointed for the term of six years. The governor shall have the power of removal of any commissioner for cause, specifically stated.

The commissioners shall serve without compensation, excepting actual expenses incurred in attending regular and special meetings of the board or for performing any service for the institution by the direction of the board; *Provided*, In all cases of cash paid out by the commissioners an itemized account, accompanied by the proper vouchers therefor, signed by the person to whom such money has been paid, shall accompany the vouchers upon which all warrants for such expenditures shall issue.

Legislation. Sec. 4161-B. § 2 of Act of 1909, cited under § 4161-A.

4161-C. Superintendent — Assistant — Clerks, teachers, etc.

SEC. 37c. Within 90 days after appointment, the commissioners shall, with the approval of the governor, appoint a superintendent, who shall be a skilled physician, who has had not less than two (2) years experience in a similar institution, he shall be competent to direct the medical, hygienic, educational and industrial interests of said state home and training school; he shall reside at the state home and training school, and shall have a general supervision over its affairs; and he shall receive a salary of three thousand (\$3,000.00) dollars per annum and maintenance.

Said superintendent may be removed at any time by said board of commissioners with the consent of the governor, for cause specifically stated.

Said board of commissioners, shall in like manner, appoint a matron, who shall be an assistant to the superintendent, espe-

cially in the caring for females admitted to said state home and training school, she shall have had at least one year's experience in a similar institution, shall reside permanently at said state home and training school without cost to her, and she shall receive a salary at the rate of not to exceed eighteen hundred (\$1,800.00) dollars per annum.

The assistant superintendent may be removed at any time by the superintendent with the consent of the commissioners, for cause specifically stated.

The superintendent shall, with the approval of the commissioners, appoint such office assistants, teachers, attendants, foremen and other employees, who shall be residents and electors of the state of Colorado, as may be required from time to time, and he may remove said appointees.

The salaries of said appointees shall be fixed by the commissioners and approved by the governor.

The salaries of all officers and employees of the state home and training school and all bills incurred shall be audited by the state auditor monthly, and warrants therefor drawn upon the state treasurer to be paid out of the funds appropriated for the said state home and training school.

Legislation. Sec. 4161-C. § 3 of Act of 1909, cited under § 4161-A.

4161-D. Site for home—Construction—Report.

SEC. 37d. Immediately upon their appointment it shall become the duty of the commissioners to acquire a site for the home and training school at such location as said commissioners may determine, said site to consist of not less than two hundred eighty (280) acres.

The superintendent shall supervise the construction of the state home and training school which shall be according to plans approved by the superintendent, the commissioners and the governor. The general plan of construction shall be that of "cottage system" and the building shall be fireproof.

The superintendent and board of commissioners shall make a report to the governor and state board of charities and corrections on or before the first day of December in each and every

year, showing the conditions of the state home and training school financially; the number, age, sex, occupation, residence, treatment and state of recovery, of all persons admitted from the opening of the state home and training school, or from the date of the last report, together with such other facts and suggestions as from experience and observation may be deemed of necessity to the public; the governor shall call said report to be published and he shall present them to the next general assembly.

Legislation. Sec. 4161-D. § 4 of Act of 1909, cited under § 4161-A.

4161-E. Inmates—Payment—Power of court to commit.

SEC. 37e. There shall be admitted to the state home and training school feeble-minded persons, incapable of receiving instruction in the public schools, also epileptics and feeble-minded adults unable to care for themselves or their property; *Provided* that the applicant, or his legal guardian shall be a bona fide resident of Colorado. When parents, or feeble-minded persons, are able to pay the whole or any part of the maintenance it shall be required of them.

There may be admitted from other states and territories feeble-minded persons; *Provided*, That after all Colorado applicants are cared for there shall be room; *And, provided*, That such non-resident applicants shall not be afflicted with tuberculosis or other contagious diseases; *And providing*, That the entire expense, including room rent, board and training shall be paid by the parents, state or territory making such application. *Provided, further, however*, That if the person so committed is a poor or indigent person, that it affirmatively appears upon the face of said certificate or otherwise that the person so committed had not prior to such commitment acquired a legal residence in the state, then it shall be the duty of the commissioner of lunacy, or board of commissioners, by and with the consent of the governor, to return such insane or mentally defective person either before or after his admission to the insane asylum or state home and training school for mental defectives to the country or state to which he belongs, or in which he resided prior to coming to Colorado, and for this purpose the said commission may expend so much

of the money appropriated for the care of the insane as may be necessary.

Courts which now have authority to commit persons to the state insane asylum are by this act authorized and empowered to determine whether or not an applicant shall be committed to the state home and training school for mental defectives, and shall make their order of commitment in accordance with the findings of the condition of each individual person; and in addition to the order of commitment the judge of the court committing a person to the state home and training school for mental defectives, shall issue a certificate under the seal of the court showing the name, age, sex, nativity and occupation of the persons so committed, and further showing the place of residence of such person, how long such person has resided in Colorado, the place of residence of such person next before coming to Colorado, the name of the person making the petition for commitment, the names of the witnesses examined upon the trial of such person, and the names of the jurors before whom such person was tried.

Legislation. Sec. 4161-E. § 5 of Act of 1909, cited under § 4161-A.

4161-F. Endowment fund.

SEC. 37f. There is hereby authorized the state home and training school endowment fund, and any parent, person, corporation or institution may contribute to said endowment fund an amount or may provide an income sufficient to perpetually or for life maintain one or more person or persons in the state home and training school the by-laws to be provided by the commissioners shall prescribe the different endowments; but it is hereby provided that investments from said endowment fund shall be in state, county or city bonds, or in first mortgages on improved realty for not more than forty per cent. of the actual value of such realty.

Legislation. Sec. 4161-F. § 6 of Act of 1909, cited under § 4161-A.

4161-G. May receive gifts, etc.

SEC. 37g. The state home and training school is hereby authorized to receive gifts, legacies, devises, and conveyances of

property, real or personal that may be made, given or granted to or for the state home and training school and provided said gift or gifts shall not be prescribed, the board of trustees with approval of the governor, shall exercise such authority and make such disposition of such gift property as may be for the best interest of said state home and training school.

Legislation. Sec. 4161-G. § 7 of Act of 1909, cited under § 4161-A.

Sec. 8 gave an appropriation and § 9 was the emergency clause.

The R. S. Chapter entitled Lunatics was reprinted as the corresponding chapter of the G. L., section for section, there being no intervening legislation, except that Sec. 31 was enlarged by Act of 1874 p. 179, as noted under § 4135.

The G. S. Chapter was a reprint of the G. L. Chapter, noting amendments to its §§ 28 and 29 made by Act of 1879 p. 90 as noted under §§ 4127 and 4128, and adding the Insane Asylum Act of 1879 p. 87 now, as amended, Division III of the text.

See notes to § 4127.

